

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE: NATIONAL :
PRESCRIPTION OPIATE :
LITIGATION. : Case No. 17-MD-2804
:
This document relates :
to Tracks 8 and 9. :
- - - - - x

Thursday, May 30, 2024
Washington, D.C.

Videotaped Deposition of:
JOSEPH T. RANNAZZISI,
called for oral examination by counsel for the
Defendants, pursuant to notice, at the law offices of
Motley Rice, LLC, 401 Ninth Street, Northwest,
Suite 1001, Washington, D.C. 20004, before Christina
S. Hotsko, RPR, CRR, of Veritext Legal Solutions, a
Notary Public in and for the District of Columbia,
beginning at 9:14 a.m., when were present on behalf
of the respective parties:

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 On behalf of Plaintiff Cobb County:</p> <p>THOMAS SHERIDAN, III, ESQUIRE (Via Zoom)</p> <p>3 Simmons Hanly Conroy, LLP</p> <p>112 Madison Avenue, Seventh Floor</p> <p>4 New York, New York 10016</p> <p>(212) 257-8482</p> <p>ts Sheridan@simmonsfirm.com</p> <p>6</p> <p>On behalf of Plaintiff Tarrant County:</p> <p>7 SADIE TURNER, ESQUIRE (Via Zoom)</p> <p>LEILA AYACHI, ESQUIRE (Via Zoom)</p> <p>8 The Lanier Law Firm, PC</p> <p>10940 West Sam Houston Parkway North, Suite 100</p> <p>9 Houston, Texas 77064</p> <p>(713) 659-5200</p> <p>sadie.turner@lanierlawfirm.com</p> <p>11</p> <p>On behalf of the Witness:</p> <p>12 DONALD A. MIGLIORI, ESQUIRE</p> <p>Motley Rice, LLC</p> <p>13 28 Bridgeside Boulevard</p> <p>Mt. Pleasant, South Carolina 29464</p> <p>14 (843) 216-9000</p> <p>dmigliori@motleyrice.com</p> <p>15</p> <p>On behalf of Albertsons:</p> <p>16 JOHN F. GIBBONS, ESQUIRE</p> <p>EMILY E. MANKOWSKI, ESQUIRE</p> <p>Greenberg Traurig, LLP</p> <p>17 77 West Wacker Drive, Suite 3100</p> <p>Chicago, Illinois 60601</p> <p>18 (312) 456-8400</p> <p>gibbonsj@gtlaw.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1 CONTENTS</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Counsel for Albertsons 08</p> <p>4 Counsel for Publix 196</p> <p>5 Counsel for Witness 386</p> <p>6</p> <p>7 RANNAZZISI DEPOSITION EXHIBITS: * PAGE</p> <p>8 Exhibit 1 Rannazzisi Expert Report, 15 Apr 2024 08</p> <p>9 Exhibit 2 Due Diligence Compliance Invoice 54</p> <p>23 May 2024</p> <p>10</p> <p>Exhibit 3 Rannazzisi Expert Report, 22 Aug 2022 58</p> <p>11</p> <p>Exhibit 4 Rannazzisi Expert Report, 24 Jan 2024 60</p> <p>12</p> <p>Exhibit 5 Deposition Transcript 14 Dec 2022 65</p> <p>13</p> <p>Exhibit 6 Due Diligence Compliance Invoice 198</p> <p>14 16 May 2023</p> <p>15 Exhibit 7 DEA Press Release, June 2013 232</p> <p>16 Exhibit 8 Rannazzisi Declaration, CVS Litigation 238</p> <p>17 Exhibit 9 Rannazzisi Declaration, Cardinal Health 239</p> <p>Litigation</p> <p>18</p> <p>Exhibit 10 Rannazzisi Statement before Congress 244</p> <p>19 29 April 2014</p> <p>20 Exhibit 11 DEA Report of Investigation, Sept 2008 280</p> <p>21 Exhibit 12 DEA Report of Investigation, Sept 2011 286</p> <p>22 Exhibit 13 DEA Report of Investigation, 21 July 2015 291</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES CONTINUED</p> <p>2 On behalf of Publix Super Markets, Inc.:</p> <p>MICHAEL P. KOHLER, ESQUIRE</p> <p>3 Miller & Martin, PLLC</p> <p>1180 West Peachtree Street, Northwest</p> <p>4 Regions Plaza, Suite 2100</p> <p>Atlanta, Georgia 30309</p> <p>5 (404) 962-6100</p> <p>michael.kohler@millermartin.com</p> <p>6</p> <p>KARA KAPKE, ESQUIRE</p> <p>7 Barnes & Thornburg, LLP</p> <p>11 S. Meridian Street</p> <p>8 Indianapolis, Indiana 46204-3535</p> <p>(317) 236-1313</p> <p>9 kkapke@btlaw.com</p> <p>10</p> <p>Also Present:</p> <p>11 Orson Braithwaite, Video Technician</p> <p>Kathleen Lucas (Via Zoom)</p> <p>12 Sophia Pritchett (Via Zoom)</p> <p>Bill Hammond (Via Zoom)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 5</p> <p>1 RANNAZZISI DEPOSITION EXHIBITS: * PAGE</p> <p>2</p> <p>Exhibit 14 DEA Report of Investigation, 24 July 2015 297</p> <p>3</p> <p>Exhibit 15 DEA Report of Investigation, May 2015 298</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 * (Exhibits attached to transcript.)</p> <p>22</p>

<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 VIDEO TECHNICIAN: Good morning. We are</p> <p>3 going on the record at 9:14 a.m. on May 30th,</p> <p>4 2024.</p> <p>5 Please note that the microphones are</p> <p>6 sensitive and may pick up whispering and private</p> <p>7 conversations. Please mute your phones at this</p> <p>8 time.</p> <p>9 Audio and video recording will continue</p> <p>10 to take place unless all parties agree to go off</p> <p>11 the record.</p> <p>12 This is media unit 1 of the</p> <p>13 video-recorded deposition of Mr. Joseph Rannazzisi</p> <p>14 in the matter of National Prescription Opiate</p> <p>15 Litigation, Track 8 and Track 9, Cobb County,</p> <p>16 filed in the Northern District of Ohio, case</p> <p>17 number 17-MD-2804.</p> <p>18 My name is Orson Braithwaite representing</p> <p>19 Veritext Legal Solutions, and I am the</p> <p>20 videographer.</p> <p>21 The court reporter is Christina Hotsko</p> <p>22 from the firm Veritext Legal Solutions.</p>	<p style="text-align: right;">Page 8</p> <p>1 EXAMINATION BY COUNSEL FOR ALBERTSONS</p> <p>2 BY MR. GIBBONS:</p> <p>3 Q. Mr. Rannazzisi, as you've just heard, I'm</p> <p>4 John Gibbons, a lawyer at Greenberg Traurig, and I</p> <p>5 represent Albertsons in the series of cases that</p> <p>6 have been filed against them.</p> <p>7 I have read your previous deposition</p> <p>8 testimonies, plural, and some of your trial</p> <p>9 testimonies, plural, and so I don't feel the need</p> <p>10 to go over any ground rules. I figure you know</p> <p>11 them all. Let's just have one.</p> <p>12 I will not interrupt you, and I'll let</p> <p>13 you completely answer. And if you could do the</p> <p>14 same, we'll make the court reporter very happy.</p> <p>15 Is that okay?</p> <p>16 A. That would be great.</p> <p>17 (Rannazzisi Deposition Exhibit 1 marked</p> <p>18 for identification and attached to the</p> <p>19 transcript.)</p> <p>20 BY MR. GIBBONS:</p> <p>21 Q. What we have in front of you is Exhibit</p> <p>22 Number 1 which I will identify for the record as</p>
<p style="text-align: right;">Page 7</p> <p>1 Counsel will now state their appearances</p> <p>2 and affiliations for the record.</p> <p>3 MR. GIBBONS: John Gibbons and Emily</p> <p>4 Mankowski on behalf of Albertsons.</p> <p>5 MR. KOHLER: Michael Kohler with Miller &</p> <p>6 Martin, on behalf of Publix Super Markets, Inc.</p> <p>7 MS. KAPKE: Kara Kapke with Barnes &</p> <p>8 Thornburg, also on behalf of Publix.</p> <p>9 MR. MIGLIORI: Don Migliore with Motley</p> <p>10 Rice for the witness.</p> <p>11 VIDEO TECHNICIAN: Do you want remote</p> <p>12 counsel to introduce themselves?</p> <p>13 MR. GIBBONS: Is remote counsel going to</p> <p>14 identify themselves or not? No? Okay.</p> <p>15 VIDEO TECHNICIAN: Thank you. Will the</p> <p>16 court reporter please swear in the witness.</p> <p>17 Whereupon,</p> <p>18 JOSEPH T. RANNAZZISI,</p> <p>19 being first duly sworn or affirmed to testify to</p> <p>20 the truth, the whole truth, and nothing but the</p> <p>21 truth, was examined and testified as follows:</p> <p>22</p>	<p style="text-align: right;">Page 9</p> <p>1 the expert report of Joseph Rannazzisi In Re:</p> <p>2 National Prescription Opiate Litigation, in</p> <p>3 relation to case number 1:18-OP-45274, dated</p> <p>4 April 15th, 2024.</p> <p>5 Is that what is in front of you?</p> <p>6 A. Yes, it is.</p> <p>7 Q. If I could direct your attention to</p> <p>8 page 1 of that expert report with the heading</p> <p>9 Executive Summary.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. It states, Plaintiff Tarrant County,</p> <p>13 Texas, has asked me to provide an opinion</p> <p>14 regarding the distribution practices of</p> <p>15 Albertsons. The issues examined specifically</p> <p>16 concern their policies and procedures with respect</p> <p>17 to maintaining effective control against the</p> <p>18 diversion of pharmaceutical opioids during the</p> <p>19 period from 2006 to 2014, and beyond.</p> <p>20 Did I read that accurately?</p> <p>21 A. Yes.</p> <p>22 Q. Who specifically asked you to provide</p>

<p style="text-align: right;">Page 10</p> <p>1 this opinion?</p> <p>2 A. Motley Rice.</p> <p>3 Q. Who at Motley Rice?</p> <p>4 A. Mr. Elsner and Mr. Migliori.</p> <p>5 Q. Did anyone at Tarrant County, Texas, ask</p> <p>6 you to do anything in relation to this case?</p> <p>7 A. I never was in contact with anybody from</p> <p>8 Tarrant County.</p> <p>9 Q. The paragraph I just read, does that</p> <p>10 accurately summarize your engagement?</p> <p>11 MR. MIGLIORI: Objection to form.</p> <p>12 Go ahead.</p> <p>13 THE WITNESS: Yes, it does. Because the</p> <p>14 attorneys were representing Tarrant County.</p> <p>15 BY MR. GIBBONS:</p> <p>16 Q. The third paragraph -- and it's rather</p> <p>17 lengthy, so I'll just ask you to read it to</p> <p>18 yourself.</p> <p>19 It discusses Albertsons' role as a</p> <p>20 distributor and Albertsons' need to have effective</p> <p>21 controls against diversion.</p> <p>22 Did I summarize that accurately?</p>	<p style="text-align: right;">Page 12</p> <p>1 their dispensing practices.</p> <p>2 Q. Okay. Would it be fair to say, if I</p> <p>3 drilled down on that, that you will not be opining</p> <p>4 on whether Albertsons' pharmacists conducted</p> <p>5 adequate corresponding responsibility analysis?</p> <p>6 MR. MIGLIORI: Objection to form.</p> <p>7 Go ahead.</p> <p>8 THE WITNESS: Well, there are sections of</p> <p>9 my report where I discuss corresponding</p> <p>10 responsibility, because it goes hand in hand with</p> <p>11 distribution. So I -- in the report, there are</p> <p>12 sections where I discuss statements made -- or</p> <p>13 documents where statements were made regard</p> <p>14 corresponding responsibility just to show -- as a</p> <p>15 bridge to show where distribution -- the</p> <p>16 connection between distribution.</p> <p>17 But I'm not opining on their dispensing</p> <p>18 particularly, just certain documents that discuss</p> <p>19 their dispensing practices.</p> <p>20 BY MR. GIBBONS:</p> <p>21 Q. Okay. And I have read those sections of</p> <p>22 your report, but my question is a really narrow</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. MIGLIORI: Objection to form.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. GIBBONS:</p> <p>5 Q. And the second sentence says, For the</p> <p>6 reasons discussed more fully herein, Albertsons</p> <p>7 failed to fulfill their obligations by instituting</p> <p>8 ineffective diversion control programs, thereby</p> <p>9 creating conditions that allowed diversion and</p> <p>10 oversupply of opioids in Tarrant County, Texas.</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes, sir.</p> <p>13 Q. So is it fair for me to conclude that you</p> <p>14 are not providing expert opinions related to</p> <p>15 Albertsons' dispensing practices?</p> <p>16 A. I'm not providing opinions regarding the</p> <p>17 dispensing practices. I think there was another</p> <p>18 expert that was doing dispensing.</p> <p>19 Q. Okay. So you are not that expert. You</p> <p>20 are not an expert on Albertsons' dispensing</p> <p>21 practices.</p> <p>22 A. That's correct. I'm not an expert on</p>	<p style="text-align: right;">Page 13</p> <p>1 one.</p> <p>2 You are not holding yourself out in this</p> <p>3 deposition as providing expert opinion as to</p> <p>4 whether Albertsons' pharmacists conducted adequate</p> <p>5 corresponding responsibility analysis in their</p> <p>6 dispensing of opioids; is that correct?</p> <p>7 MR. MIGLIORI: Objection to form. And</p> <p>8 foundation.</p> <p>9 Go ahead.</p> <p>10 THE WITNESS: Well, I discuss the</p> <p>11 statements where dispensing was the subject of the</p> <p>12 document, but I'm just discussing it as it relates</p> <p>13 to the distribution of opioids, not as the</p> <p>14 dispensing opioids.</p> <p>15 BY MR. GIBBONS:</p> <p>16 Q. I understand that. I have read where</p> <p>17 you're discussing statements.</p> <p>18 My question, though, is, are you holding</p> <p>19 yourself out as an expert in this deposition as to</p> <p>20 whether Albertsons' pharmacists adequate</p> <p>21 corresponding responsibility analysis in the</p> <p>22 dispensing of opioids?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. So overall --</p> <p>2 MR. MIGLIORI: Objection. Asked and</p> <p>3 answered.</p> <p>4 Go ahead.</p> <p>5 THE WITNESS: Overall, I'm not providing</p> <p>6 an opinion on the dispensing practices. My</p> <p>7 statements within the document are very narrow and</p> <p>8 related to statements made by their pharmacists.</p> <p>9 BY MR. GIBBONS:</p> <p>10 Q. Would it be fair for me to say that</p> <p>11 you're also not holding yourself out as an expert</p> <p>12 on the adequacy of Albertsons' dispensing policies</p> <p>13 and procedures?</p> <p>14 A. I wasn't asked to comment on their</p> <p>15 dispensing. So no, I'm not an expert on their</p> <p>16 dispensing procedures.</p> <p>17 Q. For Albertsons.</p> <p>18 A. For Albertsons. Yes.</p> <p>19 Q. All right. I'd like to turn your</p> <p>20 attention to the appendix A, which is your CV.</p> <p>21 And tell me when you're there.</p> <p>22 A. I am here.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. That was right out of pharmacy school?</p> <p>2 A. Yes.</p> <p>3 Q. Is it accurate that, during the last 38</p> <p>4 years, you've not practiced as a pharmacist?</p> <p>5 A. Yeah -- I've maintained my license, but I</p> <p>6 have not practiced -- I wasn't behind the bench,</p> <p>7 as they say.</p> <p>8 Q. Is it also accurate that you've never</p> <p>9 worked as a pharmacist in a large pharmacy chain?</p> <p>10 A. I worked briefly at Hook's at 71st and</p> <p>11 Michigan Road.</p> <p>12 Q. Do I see that on your CV?</p> <p>13 A. No, because that was where I did my -- I</p> <p>14 guess you'd call it a residence now.</p> <p>15 Q. And how long were you there for?</p> <p>16 A. I think three months.</p> <p>17 Q. And this was before you got your license</p> <p>18 as a pharmacist?</p> <p>19 A. Before I was licensed, but in my fifth</p> <p>20 year as a -- I guess you'd call it a student.</p> <p>21 Q. And what year was that?</p> <p>22 A. In '84.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. I'm going to ask you to turn to</p> <p>2 appendix A-4.</p> <p>3 A. Yes.</p> <p>4 Q. You were a staff pharmacist from 1984 to</p> <p>5 1986; is that right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And were you at a VA? Is that where you</p> <p>8 were?</p> <p>9 A. I was both VA outpatient -- operated like</p> <p>10 a pharmacy -- and then inpatient where we did just</p> <p>11 inpatient work related to hospitalized patients.</p> <p>12 Q. Okay. So -- I missed your statement</p> <p>13 there. You did VA outpatient work where?</p> <p>14 A. At the VA and at Cold Spring -- there's</p> <p>15 two VA facilities. There's one at Cold Spring</p> <p>16 Road and there's one downtown on West 10th Street.</p> <p>17 I did outpatient services at both West</p> <p>18 10th Street and Cold Spring Road, and then I did</p> <p>19 inpatient at West 10th Street.</p> <p>20 Q. Got it. And you did that for</p> <p>21 approximately two years?</p> <p>22 A. Two years.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. So it would be true that, since 1984,</p> <p>2 you've never worked as a pharmacist in a pharmacy</p> <p>3 chain?</p> <p>4 A. Yes.</p> <p>5 Q. And I'm assuming, based on reading your</p> <p>6 CV, that you've never worked for a large pharmacy</p> <p>7 chain in any capacity; is that fair to say?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. Your CV lists a number of</p> <p>10 positions you've held at the DEA. And as I</p> <p>11 mentioned earlier, I've read a lot of the</p> <p>12 transcripts where you've discussed those, and so I</p> <p>13 only have a few questions about your background.</p> <p>14 A. Sure.</p> <p>15 Q. You started as a diversion investigator</p> <p>16 special agent out of the Indianapolis office from</p> <p>17 '86 to '88; is that right?</p> <p>18 A. Yes, it is.</p> <p>19 Q. And in the second sentence of your</p> <p>20 description of that job, you say as follows:</p> <p>21 Identified potential weaknesses in the registrant</p> <p>22 drug delivery system due to physical security</p>

<p style="text-align: right;">Page 18</p> <p>1 weaknesses or noncompliance with 21 CFR and 2 attempted to correct such violations in order to 3 prevent controlled substance diversion into the 4 illicit marketplace. 5 Did I read that accurately? 6 A. Yes, sir, you did. 7 Q. Now, you said you attempted to correct -- 8 strike that. 9 You say you attempted to identify 10 potential weaknesses in the drug delivery system. 11 Could you explain more what you were 12 trying to do? 13 A. Sure. It depends on the class of 14 registrant. So if it's a manufacturer, we'd be in 15 the facilities looking at their diversion 16 controls, how they're maintaining effective 17 controls against diversion, their physical 18 security, their paperwork, their documents, 19 inventories, their transfer documents. 20 Just -- so that would be for a 21 manufacturer. 22 For distributor, same concept. Physical</p>	<p style="text-align: right;">Page 20</p> <p>1 frame? 2 A. Yeah. We did -- for sure Eli Lilly, and 3 then one of Eli Lilly's distribution points. I 4 think we did Bindley Western. This is going back. 5 I can't remember -- I know there were others. 6 And then, for the pharmacies, we were all 7 over the pharmacies -- 8 Q. Can you remember any specific pharmacy 9 chains you might have -- 10 A. Oh -- 11 Q. -- inspected -- 12 A. -- well, not distribution, but definitely 13 for dispensing. We were in and out of Hook's 14 pharmacies. I believe Osco was one of the 15 pharmacies we were in and out of. People's Drug. 16 And then the small independent pharmacies as well. 17 Q. Do you recall ever looking into any 18 pharmacies related to Albertsons? 19 A. No. Not in Indianapolis, no. 20 Q. And you state that you attempted to 21 correct such violations when you found them. 22 Did I read that right?</p>
<p style="text-align: right;">Page 19</p> <p>1 security. Are they providing the necessary 2 inventory or transfer paperwork to things like 3 ARCOS? Are they maintaining the appropriate 4 documents, the 222 forms, their invoices. Have 5 they been conducting their biannual inventories? 6 Are they maintaining a cage that's in compliance 7 with the Act? Are they maintaining a vault that's 8 in compliance with the Act? 9 And then, finally, pharmacies. We would 10 be in pharmacies looking at prescriptions, making 11 sure that the elements of the prescriptions are in 12 play, looking at the prescriptions to see if the 13 pharmacist was actually dispensing in a manner 14 that's consistent with the Controlled Substances 15 Act. 16 So depending on the registrant, that's 17 how we would determine what we're doing. But in 18 all of those cases, we were looking to see if 19 there was holes in the system where potentially we 20 could button up so there is no diversion. 21 Q. And can you recall any distributors that 22 you would have investigated back in that time</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Yes. 2 Q. Can you describe what you did to attempt 3 to correct such violations when you found them? 4 A. Sure. So for instance, recordkeeping 5 violations. We'd make sure that the pharmacies 6 were maintaining copies of the 222s, the 7 distributors were maintaining them. We made sure 8 they were filled out appropriately. If they 9 weren't filled out appropriately, we'd explain to 10 them why it's not filled out correctly and ask 11 them to make sure that the pre- -- that the 12 paperwork is done appropriately. 13 Same thing with making the distribution 14 paperwork readily retrievable. The worst thing 15 you can do is walk in and say, I'd like to see all 16 your schedule 325 invoices, and they say, oh, 17 well, it's offsite; we can't give them to you now. 18 Things like that we would correct. You 19 have to bring it back on site. You must record 20 the amount that you sent. You must maintain 21 these -- this paperwork in a certain way. And it 22 goes down the chain to pharmacies. The same</p>

<p style="text-align: right;">Page 22</p> <p>1 concept with prescriptions. Find prescriptions 2 that might not have the doctor's signature or 3 might not have the correct number, or the 4 pharmacist wrote in the number, or that it doesn't 5 have the correct DEA number. Things like that. 6 All those are correctable, and, you know, 7 we just support the pharmacists or support the 8 distributors to ensure that they have the 9 appropriate guidance to make sure that those areas 10 of the Code of Federal Regulations and the 11 Controlled Substances Act are complied with. 12 Q. And you said in that answer that you 13 would explain to them, meaning whoever the 14 registrant was, what their deficiencies were, 15 what, in an attempt to help them comply with the 16 law? 17 A. Yes. 18 Q. Did you find that to be one of the duties 19 that you had as a DEA diversion investigator? 20 A. In certain areas, absolutely, yes. 21 Q. In this area. 22 A. When we're talking about documentation,</p>	<p style="text-align: right;">Page 24</p> <p>1 deficiencies. 2 A. Okay. Well, if a distributor has taken a 3 massive loss and not filed any kind of theft or 4 loss statements, that's a problem. And they know 5 they're required to maintain theft and loss 6 statements. So that's one where we'd say, well, 7 you have to do this. And it's probably one that 8 we would not -- we would have to go to the next 9 level of enforcement or administrative 10 enforcement, which would be either a field hearing 11 or a letter of admonishment or a -- all the way up 12 to an administrative action. 13 Q. Let me ask it this way: When you used 14 term "diversion controls" -- 15 A. Uh-huh. 16 Q. -- at a distributor, what did you mean by 17 that? 18 A. Maintaining effective controls against 19 diversion is outlined in 1301.74, and it basically 20 lays out, but it deals with physical security and 21 it also deals with -- I guess you would call it 22 administrative security.</p>
<p style="text-align: right;">Page 23</p> <p>1 talking about security -- a lot of issues with 2 security that we had -- you know, when we did an 3 inspection, things had to be upgraded, alarms had 4 to be updated, central station monitoring had to 5 be -- there was things like that. 6 So yes, we tried to make corrections on 7 site so it wouldn't go to the next level. 8 Q. And one of the areas you referenced when 9 you were inspecting distributors was diversion 10 controls. 11 Did I hear that right? 12 A. Yes. 13 Q. And would you have the same philosophy as 14 it relates to diversion controls? If you saw 15 deficiencies in a distributor's diversion 16 controls, would you explain that to them in an 17 attempt to correct those deficiencies to comply 18 with the law? 19 A. It -- it depends on the types of 20 deficiencies. 21 Q. Tell me the areas that you would not try 22 to explain a distributor's diversion control</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. But it would also entail policies and 2 procedures at the distributor as it relates to 3 those functions of preventing diversion; would 4 that be fair to say? 5 MR. MIGLIORI: Objection to form. 6 THE WITNESS: I think that policies and 7 procedures, depending on the policies and 8 procedures in place, yeah, we did ask for policies 9 and procedures when we were out there. Of course 10 we did. But it just depends. Certain policies 11 and procedures, it's up to the distributor. 12 BY MR. GIBBONS: 13 Q. Okay. But I'm asking about your role as 14 a diversion investigator. 15 You would, as you said, look at a 16 distributor's policies and procedures in relation 17 to any controls they had in relation to diversion; 18 is that right? 19 A. Right. 20 Q. And would you have the same philosophy if 21 you saw deficiencies in those policies and 22 procedures regarding diversion, you would explain</p>

<p style="text-align: right;">Page 26</p> <p>1 it to them and then hope to correct them so they 2 wouldn't be in violation of the law? 3 MR. MIGLIORI: Objection to form. 4 Go ahead. 5 THE WITNESS: Again, it depends on -- of 6 course, our primary job, when we were out there, 7 was to look at all their control policies and 8 procedures, the way they're operating their 9 controlled substance business and to make 10 corrections. 11 But some things we have to leave it to 12 them. While we may look at their policies and 13 procedures and we might ask them a question, we 14 rely on what they say. 15 Now, physical security is easy. I mean, 16 I can go in and do a physical security sweep 17 and -- without looking at their policies and 18 procedures and know if their physical security is 19 in place. And then we look at their policies and 20 procedures to see who's going in and out, how many 21 people are authorized to go into a cage or a 22 vault, and things like that.</p>	<p style="text-align: right;">Page 28</p> <p>1 to explain these deficiencies, if and when you saw 2 them in a company's policies and procedures? 3 MR. MIGLIORI: Objection to form. 4 THE WITNESS: It depends -- yes. It 5 depends on -- yeah, most of the time we did do 6 that. Yes. 7 BY MR. GIBBONS: 8 Q. Okay. You then continued to work at the 9 DEA from 1986 to 2015; is that right? 10 A. Yes. 11 Q. And if my math is correct, approximately 12 a 29-year career? 13 A. Yeah. 29-1/2 years. Yeah. 14 Q. 29-1/2 years. It's like my four-year-old 15 math. I don't have a four-year-old, but... 16 In those years, did you ever conduct a 17 SOMs investigation personally? 18 A. Well, when I was with the diversion -- 19 when I was with the Office of Diversion Control, I 20 had to review the SOMs investigations when they 21 came into the -- to my office, and especially if 22 there was an order to show cause action or a</p>
<p style="text-align: right;">Page 27</p> <p>1 But there are other policies and 2 procedures that are not as apparent. So... 3 BY MR. GIBBONS: 4 Q. Do you recall any instance in which you 5 explained any deficiencies in a distributor's 6 policies and procedures in relation to diversion 7 control? 8 A. Way back when? 9 Q. Yeah, I'm talking about -- 10 A. Yeah -- 11 Q. -- your experience in '98 -- '86 to '88. 12 A. I mean, that's a long time ago. I'm sure 13 we sat down -- we always had an entry conference 14 with the company, and we also had an exit 15 conference, and we would have daily meetings at 16 the end of the day to discuss some findings, 17 especially when we did audits. 18 So yes, we would discuss that, but I just 19 don't recall specifics on -- 20 Q. Okay. Last question in this area. 21 But you felt that was part of your duties 22 and responsibilities as a diversion investigator</p>	<p style="text-align: right;">Page 29</p> <p>1 letter of admonition, I looked at what they were 2 doing and their findings. Yes. 3 Q. And I appreciate that nuance, but my 4 question is a little more narrow. 5 Did you ever personally conduct a SOMs 6 investigation? 7 A. I personally did not conduct a SOMs 8 investigation. 9 Q. Did you ever inspect a distribution 10 center like Ponca, which was Albertsons' district 11 center? 12 A. Again, I never inspected a distribution 13 center at Ponca, but I did, as a diversion 14 investigator, yes, I did do a distribution center. 15 Q. Okay. I want to talk about your 16 compensation. And we can go about this any number 17 of different ways. 18 A. Sure. 19 Q. In your 29-1/2 years, are you able to 20 tell me the highest salary you had achieved in 21 your DEA career? 22 A. I think the highest salary I had was</p>

8 (Pages 26 - 29)

<p style="text-align: right;">Page 30</p> <p>1 \$186,000.</p> <p>2 Q. And I did spend some time in the</p> <p>3 government. I don't recall we ever got any</p> <p>4 bonuses, but let me ask.</p> <p>5 Did you get bonuses in any of your years</p> <p>6 as a DEA employee?</p> <p>7 A. Yes, I did get bonus -- yeah, I did get a</p> <p>8 bonus.</p> <p>9 Q. The 186,000, was that cumulative of</p> <p>10 salary and bonus or --</p> <p>11 A. That was cumulative of salary and bonus.</p> <p>12 Q. And was this later in your career that</p> <p>13 you achieved 186,000?</p> <p>14 A. Yes.</p> <p>15 Q. What month in 2015 did you retire?</p> <p>16 A. October 31st, 2015.</p> <p>17 Q. Halloween?</p> <p>18 A. Yeah.</p> <p>19 Q. Any significance to that? Just have to</p> <p>20 ask.</p> <p>21 A. No. That was the day.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. -- that --</p> <p>2 A. -- the main reason. Any other reasons?</p> <p>3 I don't know what you're --</p> <p>4 Q. I am not hunting for anything --</p> <p>5 A. Yeah.</p> <p>6 Q. -- except all of the reasons that led to</p> <p>7 your decision to end your career after 29-1/2</p> <p>8 years at the DEA.</p> <p>9 MR. MIGLIORI: Objection to form.</p> <p>10 Go ahead.</p> <p>11 THE WITNESS: The reason was that I</p> <p>12 was -- basically, somebody was promoted into my</p> <p>13 position, and they couldn't give me an answer of</p> <p>14 where I was going. And that was basically the</p> <p>15 reasons.</p> <p>16 BY MR. GIBBONS:</p> <p>17 Q. Okay. Because I wasn't limiting myself</p> <p>18 to primary. I'm limiting myself to any reason</p> <p>19 that fueled your decision. I've heard your</p> <p>20 answers so far.</p> <p>21 Anything else?</p> <p>22 MR. MIGLIORI: Objection to form.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. It was just that was the day. It was the</p> <p>2 last day in October 2015, yeah.</p> <p>3 Q. Could you explain for us all of the</p> <p>4 reasons that you left the DEA?</p> <p>5 A. Yeah --</p> <p>6 MR. MIGLIORI: Objection to form.</p> <p>7 Go ahead.</p> <p>8 THE WITNESS: Well, they decided to bring</p> <p>9 in a new deputy assistant administrator. The new</p> <p>10 deputy assistant administrator was taking the</p> <p>11 reins of the Office of Diversion Control. I --</p> <p>12 they were not sure where they were going to</p> <p>13 transfer me. I had done enough transfers in my</p> <p>14 career. My daughters were young, and we just</p> <p>15 didn't want to do another transfer. And I decided</p> <p>16 it was time. I decided it was time.</p> <p>17 So I put in my paperwork when he got</p> <p>18 there. I think there was a month crossover, and</p> <p>19 then I pulled plug.</p> <p>20 BY MR. GIBBONS:</p> <p>21 Q. Are there any other reasons --</p> <p>22 A. That was --</p>	<p style="text-align: right;">Page 33</p> <p>1 Go ahead.</p> <p>2 THE WITNESS: Anything else? I don't</p> <p>3 know -- I guess -- the administrator decided to</p> <p>4 make a transfer and, to be honest with you, I</p> <p>5 don't know what his reasoning was, but we didn't</p> <p>6 see eye to eye on certain things. And so -- that</p> <p>7 was the other thing. You know, he was an acting</p> <p>8 administrator, and so -- but other than that -- it</p> <p>9 was more -- I couldn't tell you what I was going</p> <p>10 to do. And I would have to tell my family, well,</p> <p>11 get ready, we're going to be transferred, which</p> <p>12 I've told them before, and I don't -- it never</p> <p>13 went over real well, especially with two young</p> <p>14 girls, one of which was starting -- or in the</p> <p>15 midst of high school.</p> <p>16 So I just decided it was time.</p> <p>17 BY MR. GIBBONS:</p> <p>18 Q. Who was the deputy assistant</p> <p>19 administrator that took your position?</p> <p>20 A. A guy named Lou Milione.</p> <p>21 Q. And you said you didn't see eye to eye on</p> <p>22 certain things.</p>

<p style="text-align: right;">Page 34</p> <p>1 Did any of them include how to work with</p> <p>2 the pharmaceutical industry in relation to the</p> <p>3 opioid crisis?</p> <p>4 A. Well, I don't think he was there long</p> <p>5 enough to determine what I did or didn't do in the</p> <p>6 pharmaceutical industry, unless he was listening</p> <p>7 to people in the pharmaceutical industry.</p> <p>8 So I believed at that point in time that</p> <p>9 I was doing everything that I could to enlighten</p> <p>10 the pharmaceutical industry on what they should be</p> <p>11 doing.</p> <p>12 So -- I don't know. He wasn't there. We</p> <p>13 got there in May or June, and I left in October.</p> <p>14 Q. Fair enough. But I'm just following up</p> <p>15 on an answer you gave. You said you and Lou did</p> <p>16 not see eye to eye on some things. What --</p> <p>17 A. Oh --</p> <p>18 Q. -- were those things?</p> <p>19 A. Lou or the administrator?</p> <p>20 Q. Okay. Who was the administrator you</p> <p>21 didn't see eye to eye with?</p> <p>22 A. Rosenberg.</p>	<p style="text-align: right;">Page 36</p> <p>1 Regulations. And because of that, they were</p> <p>2 contacting whoever they could to listen, to</p> <p>3 tell -- for instance, Congress, for instance, the</p> <p>4 Department of Justice, and maybe DEA -- to</p> <p>5 basically ask us to back off.</p> <p>6 And when thousands and thousands of</p> <p>7 people are dying, I didn't think it was</p> <p>8 appropriate to back off.</p> <p>9 BY MR. GIBBONS:</p> <p>10 Q. Did that play any role in your decision</p> <p>11 to retire from the DEA?</p> <p>12 A. No. My problem was I did not want to</p> <p>13 transfer again. And I was going to get</p> <p>14 transferred because there was no place for me in</p> <p>15 headquarters. I was the deputy chief of</p> <p>16 operations at the time. There was already a new</p> <p>17 deputy chief of operations and two other deputy</p> <p>18 chiefs of operations, so I would have to be</p> <p>19 transferred. And so -- I had nowhere to go. And</p> <p>20 you know -- unless I was going back to</p> <p>21 Indianapolis or Detroit or New York, and none of</p> <p>22 those places had openings, I was going somewhere</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Chuck Rosenberg?</p> <p>2 A. Chuck Rosenberg, yeah.</p> <p>3 Q. Okay. What did you and Rosenberg not see</p> <p>4 eye to eye on?</p> <p>5 A. Well, now you're getting into things that</p> <p>6 I can't talk about because I'm -- the Department</p> <p>7 of Justice has limited what I could talk about.</p> <p>8 And now those are internal discussions and that</p> <p>9 couldn't be -- I couldn't talk about that.</p> <p>10 Q. So you believe your Touhy obligation to</p> <p>11 prevent you from answering that question?</p> <p>12 A. Yes.</p> <p>13 Q. Was the pharmaceutical industry putting</p> <p>14 pressure on the DEA to work in a different manner</p> <p>15 at or about the time of your departure from the</p> <p>16 DEA?</p> <p>17 MR. MIGLIORI: Objection. Form and</p> <p>18 foundation.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: I think the pharmaceutical</p> <p>21 industry was upset that we were forcing them to</p> <p>22 comply with the Act and the Code of Federal</p>	<p style="text-align: right;">Page 37</p> <p>1 where I didn't want to go.</p> <p>2 Q. Understood.</p> <p>3 VIDEO TECHNICIAN: Excuse me. Does</p> <p>4 someone have a charm or a chain or a key or</p> <p>5 something like that?</p> <p>6 THE WITNESS: Oh, I might be rubbing</p> <p>7 against my belt buckle. I'll stop that.</p> <p>8 BY MR. GIBBONS:</p> <p>9 Q. After you retired from the DEA, Chuck</p> <p>10 Rosenberg testified before Congress on June</p> <p>11 the 22nd, 2016.</p> <p>12 Are you familiar with that testimony?</p> <p>13 A. Yeah. People called me about that --</p> <p>14 Q. Okay. I'm just going to read you a quote</p> <p>15 and ask you about it.</p> <p>16 He states, We've also been opaque. I</p> <p>17 think we've been slow. I think we've -- I think</p> <p>18 we've been opaque. I think we haven't responded</p> <p>19 to them. We're trying to issue guidelines for</p> <p>20 them more quickly. We're trying to answer their</p> <p>21 questions.</p> <p>22 You're aware of that --</p>

<p style="text-align: right;">Page 38</p> <p>1 MR. MIGLIORI: Objection.</p> <p>2 BY MR. GIBBONS:</p> <p>3 Q. -- testimony?</p> <p>4 MR. MIGLIORI: Objection to form.</p> <p>5 THE WITNESS: Yeah. And he was totally</p> <p>6 off base. He had no idea what we were doing at</p> <p>7 the time, and he just -- it's almost like he just</p> <p>8 went and had a script that he was reading that</p> <p>9 somebody wrote for him. Maybe industry.</p> <p>10 BY MR. GIBBONS:</p> <p>11 Q. Okay. I think you answered my question,</p> <p>12 then. You do not believe the DEA, under your</p> <p>13 direction, then, was slow in responding to the</p> <p>14 opioid crisis?</p> <p>15 A. Absolutely not. In fact, if you look at</p> <p>16 what DEA was doing dating back to the internet</p> <p>17 crisis, we were the only federal agency working</p> <p>18 internet cases at the time. We were the only ones</p> <p>19 out there putting bad pharmacies and doctors --</p> <p>20 holding the distribution companies accountable for</p> <p>21 their internet sales, which were basically all</p> <p>22 illegal.</p>	<p style="text-align: right;">Page 40</p> <p>1 So the idea that we were opaque -- I made</p> <p>2 it very clear what our goals were, to bring the</p> <p>3 industry into compliance.</p> <p>4 So the idea that, you know, we were</p> <p>5 opaque and we weren't answering questions is</p> <p>6 ludicrous.</p> <p>7 Q. Let me ask you a very narrow question</p> <p>8 about suspicious orders.</p> <p>9 From the early 2000s or so to your</p> <p>10 retirement in 2015, did the DEA provide internal</p> <p>11 guidance to distributors about what constituted a</p> <p>12 suspicious order?</p> <p>13 A. Those letters that went out basically</p> <p>14 explained what suspicious orders are. And before</p> <p>15 that, we were in the -- in the facilities, our</p> <p>16 inspection teams were in the facilities talking</p> <p>17 about suspicious orders.</p> <p>18 Q. And -- and what guidance? Can you</p> <p>19 summarize the guidance that you believe the DEA</p> <p>20 provided distributors?</p> <p>21 A. Well, I don't have the letters in front</p> <p>22 of me, but the letters talked about what a</p>
<p style="text-align: right;">Page 39</p> <p>1 So there was no one out there doing it</p> <p>2 but DEA and the state and locals that we worked</p> <p>3 with.</p> <p>4 So the idea that we were slow, we were in</p> <p>5 the fight from the very beginning. And people who</p> <p>6 say that just basically show their ignorance.</p> <p>7 Q. So one of the things he said in his</p> <p>8 statement was that the DEA was slow in issuing</p> <p>9 guidance or answering the industry's questions.</p> <p>10 Do you dispute that?</p> <p>11 A. We had a call center that would answer</p> <p>12 any questions. We had a liaison and policy</p> <p>13 section that answered questions. We had local</p> <p>14 offices that were answering questions.</p> <p>15 If you picked up the phone and called the</p> <p>16 local office, the local office would answer your</p> <p>17 questions.</p> <p>18 We sent out guidance letters in both 2006</p> <p>19 and 2007. We actually went out and did pharmacy</p> <p>20 diversion awareness conferences.</p> <p>21 I mean, we were all over the place. And</p> <p>22 we were answering questions at those conferences.</p>	<p style="text-align: right;">Page 41</p> <p>1 suspicious order is. They talked -- depending on</p> <p>2 which letter, they talked about where you could</p> <p>3 find information on suspicious orders.</p> <p>4 They made it very clear that a suspicious</p> <p>5 order monitoring program is -- the DEA cannot</p> <p>6 dictate to you, because we don't know your</p> <p>7 business practices, we don't know your client</p> <p>8 base, we can't tell you how to create your</p> <p>9 suspicious order monitoring program. But any</p> <p>10 suspicious order monitoring program must have the</p> <p>11 ability to maintain -- to identify orders of</p> <p>12 unusual size, orders that substantially deviate</p> <p>13 from a normal pattern and unusual frequency. And</p> <p>14 that's outlined in 1301.74.</p> <p>15 So -- and then we went on to explain</p> <p>16 that. So I don't -- I don't know, you know, what</p> <p>17 else we could have done, doing all those meetings</p> <p>18 and actually meeting with groups and -- that was</p> <p>19 basically it. So...</p> <p>20 Q. Okay. So you -- looking back on your</p> <p>21 career, you don't think you could have done</p> <p>22 anything different in relation to providing more</p>

<p style="text-align: right;">Page 42</p> <p>1 specific guidance to distributors in relation to 2 what is a suspicious order or what is an 3 appropriate SOMs program? 4 MR. MIGLIORI: Objection to form. 5 THE WITNESS: A suspicious order 6 definition is in the Code of Federal Regulations. 7 It's very clear. And it's an order of unusual 8 size, frequency or substantially deviating. 9 As I've testified before, that's very 10 clear. And if there was questions on it, they 11 could call us and ask us. But the calls were, 12 well, should I distribute this quantity? Or this 13 guy ordered this -- I can't make that decision for 14 them. That was -- Department of Justice and DEA 15 had longstanding rules about telling them what 16 they can and can't do. And I think that dates 17 back to the NWDA documents that -- many years ago. 18 BY MR. GIBBONS: 19 Q. Okay. We'll cover that a little more 20 carefully when I get around to the regulation. 21 A. Okay. 22 Q. Let me just finish up with your CV now.</p>	<p style="text-align: right;">Page 44</p> <p>1 know, questions regarding certain things, you 2 know -- certain things to look for. They were 3 trying to develop software -- 4 Q. In what area? 5 A. Pharmaceuticals. Mostly for state -- I 6 guess for -- it would be for states -- state and 7 agencies that were regulatory agencies, things 8 like that. 9 Q. Okay. They said -- you said that they 10 were hitting you up for information, given your 11 background as a DEA agent. 12 What -- give us some examples of what 13 type of information you were providing to Alpha 6. 14 A. I -- 15 MR. MIGLIORI: Objection to form. 16 Go ahead. 17 THE WITNESS: It wasn't in -- nothing, 18 they just wanted to know, like, how regulatory -- 19 a state regulatory agency reviewed things. They 20 were looking at the PDMPs and trying to see if 21 they could create better PDMPs. There was nothing 22 really -- it was just all things that I had looked</p>
<p style="text-align: right;">Page 43</p> <p>1 Within months of you retiring -- I think 2 it was April of 2016 you started working at Alpha 3 6? 4 A. Yes. 5 Q. What was Alpha 6? 6 A. It's a software company. It does, like, 7 software solutions and also does hardware work. 8 It's a tech company. 9 Q. And what did you do there? 10 A. I was helping them just with different 11 programs. They were looking at potentially doing 12 a pharmaceutical -- some kind of -- different 13 pharmaceutical programs, and so they hired me to 14 help them navigate different pharmaceutical. 15 Q. Do you have a background in software 16 solutions? 17 A. No. I think they were using me for my 18 pharmacy background. 19 Q. At a high level. You don't know how to 20 write code, do you? 21 A. No. They -- no. They had their own code 22 writers. They were just hitting me up for, you</p>	<p style="text-align: right;">Page 45</p> <p>1 at before. I'm very knowledgeable in the PDMPs 2 and -- so things like that. 3 I mean, they were looking at how they 4 could integrate certain, like, geographic or 5 demographic information into a software program to 6 help the PDMPs. 7 So they were just, you know, looking at 8 certain things that would help the regulatory 9 agencies better understand the drug flow through 10 their communities. 11 BY MR. GIBBONS: 12 Q. So Alpha 6 was providing guidance to the 13 regulatory agency as opposed to the other side, 14 meaning the industry itself? 15 A. Yeah, they were -- this was -- I don't 16 know if it ever got off the ground, but they 17 weren't providing anything; they were just looking 18 into it. I was hired to help them look at the 19 software package and see what the state and local 20 agencies could use. 21 Q. Did any of this work look at SOMs 22 programs?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. I think on a state level, yeah, anything 2 that would have to do with PDMPs naturally would 3 have some kind of view because they would want to 4 know how much drug is coming into their -- so 5 yeah. I mean, was it a SOMs program? I don't 6 know necessarily if it was a SOMs program, but it 7 was a program that would maybe integrate for the 8 state and locals how the drug flow was going 9 through their communities. 10 They didn't have and we don't have 11 access -- and the states didn't have access at 12 that point in time to drug distribution data, 13 ARCOS data. So -- I mean, it was on an as-needed 14 basis with a formal request. So you weren't going 15 to get a state who was going to get all of the 16 ARCOS data for that state. It just doesn't happen 17 that way. 18 So I think it was more drug flows 19 pursuant to the PDMP data that we were looking at. 20 Q. Okay. So you were not advising this 21 company, Alpha 6, as it relates to how a 22 distributor could or should create an adequate</p>	<p style="text-align: right;">Page 48</p> <p>1 and it wasn't fair to them, so I just told them I 2 was going to leave. 3 Q. And was that the sole reason for you 4 leaving Alpha 6? 5 A. That was the primary reason. Yeah. 6 Q. What were the other reasons? 7 A. There wasn't -- well, I didn't know if I 8 was going to be alive. 9 Q. Health. 10 A. Yeah. That was the main reason, yeah. 11 Q. It had nothing to do with your 12 performance or anything like that, is what I'm 13 getting at? 14 A. Oh, no. 15 Q. Okay. 16 A. Absolutely not. No. Actually, they 17 were -- it was a great company to work for. They 18 really treated their employees well. Those guys 19 were gentlemen. I just -- I was in pretty bad 20 shape after my surgery, so I -- you know, I just 21 didn't think it was the right thing to do to 22 continue to go there and work and not be able to</p>
<p style="text-align: right;">Page 47</p> <p>1 SOMs program; is that fair to say? 2 A. Yeah. It was more -- we were gearing 3 towards the state and locals. 4 Q. What led you to take that position at 5 Alpha 6? 6 A. I had a friend who worked there and said 7 they're looking to get into state and local 8 programs with pharmaceuticals and would I be 9 interested in coming on. I said sure. I met with 10 them. They were very -- they were gentlemen. 11 They were very nice. They just said, you know, 12 we're just looking at this; we don't know where 13 it's going to go, but, you know, would you be 14 interested? And I said sure. 15 Q. What was your compensation? 16 A. It was right around 200,000. 17 Q. And you were there for about a year; is 18 that right? 19 A. Yeah. I was there, but not really a year 20 because, during that time period, I had open heart 21 surgery, so I was out for three months. And then, 22 when I came back, I was just not ready to work,</p>	<p style="text-align: right;">Page 49</p> <p>1 travel and do everything they wanted me to do. 2 Q. Understood. 3 Do you know if Alpha 6 continued to 4 exist, or does it still exist today? 5 A. I'm sure it exists today. 6 Q. You then moved to -- or started at Due 7 Diligence Compliance, LLC; is that right? 8 A. That's, yeah, my company. 9 Q. Are you the owner of that company? 10 A. Yes. 11 Q. Is anyone else a part owner of the LLC? 12 A. No. 13 Q. You've been its only president; is that 14 right? 15 A. Yes. 16 Q. Do you have any employees besides 17 yourself? 18 A. No. 19 Q. Who came up with the name Due Diligence 20 Compliance, LLC? 21 A. I did. 22 Q. What went into that name choice?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Because I was mainly focused on federal, 2 state, and local agencies looking for help, and 3 due diligence is a requirement in the 4 pharmaceutical industry, not just in controlled 5 substances, but for many things. 6 And so I thought due diligence was an 7 appropriate term. 8 Q. Okay. And you stated that federal, 9 state, and local agencies were looking for 10 assistance in that area; is that right? 11 A. Uh-huh. Yes, sir. 12 Q. And over the years, have you provided 13 assistance to federal, state, and local 14 authorities? 15 A. Generally, I've provided it through 16 litigation, but I've done things outside of 17 litigation. For instance, if a pharmacy board 18 needs somebody to come in and instruct on 19 corresponding responsibility, that's part of it. 20 I'll come in and do the corresponding 21 responsibility lecture for them. 22 If a medical board wants me to come out</p>	<p style="text-align: right;">Page 52</p> <p>1 THE WITNESS: Well, the plaintiffs' 2 lawyers are working for the state, so -- I guess 3 you could say that. But in the end, the client is 4 the state. So... 5 BY MR. GIBBONS: 6 Q. Who pays your bills? 7 A. I'm sure they come through the -- 8 MR. MIGLIORI: Objection to form. 9 Foundation. 10 Go ahead. 11 THE WITNESS: -- the attorneys. 12 BY MR. GIBBONS: 13 Q. And I think you said earlier in the 14 deposition that you've not ever talked to anyone 15 at Tarrant County; is that right? 16 A. I have not. 17 Q. You've just dealt with the lawyers for 18 Tarrant County, who are private lawyers who are 19 being paid for suing manufacturers or distributors 20 or pharmacy chains; is that right? 21 A. Yeah. They represent the county in this 22 litigation. So yes.</p>
<p style="text-align: right;">Page 51</p> <p>1 and do a discussion with doctors on prescribing 2 and dispensing matters, I would do that. 3 So it just -- it depends on what I'm 4 being asked to do. There's certain things, you 5 know, I just don't generally do. 6 But for the most part, I'll take on 7 presentations. Or, in litigation, I'll help the 8 states through their litigation teams prepare for 9 trial, provide expert testimony. It just depends 10 on what I'm doing at the time. 11 Q. Okay. I think I understand. 12 So when you say that you provide 13 assistance to federal, state, and local 14 authorities, you would consider this engagement by 15 Tarrant County as providing assistance to a 16 federal, state, or local entity; is that fair to 17 say? 18 A. That's correct. 19 Q. As opposed to assisting the plaintiffs' 20 lawyers in suing pharmaceutical chains, 21 distributors, or manufacturers. 22 MR. MIGLIORI: Objection to form.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Could you estimate for me per year, if 2 you can, the amount of money you've earned in 3 providing these sorts of professional services? 4 A. I -- I mean, you have the bills for 5 these -- for this litigation. I don't -- I could 6 get that -- the totals by year. It depends. You 7 know, anywhere from 200,000 to -- I mean, early 8 on, there was really very little. I guess, by the 9 third year, I made over \$200,000. And I think the 10 most I've ever made was in the mid-3s. But most 11 of the time it's between 2 and 250. And that 12 started in 2007 [sic], I guess. 13 Q. What year? 14 A. 2017. Yeah. 15 Q. So by the third year, you were making at 16 least 200,000, and your high-water mark has been 17 around the mid-3s? 18 A. Yeah. That was the high... 19 Q. And would it be fair to say that, in 20 every one of those years, you made more money 21 providing those professional services than you 22 ever made in your high-water mark as a DEA agent?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. Oh, absolutely. Yes.</p> <p>2 Q. Can you estimate for us the cumulative</p> <p>3 amount you've earned by providing these</p> <p>4 professional services? And I'm going to give you</p> <p>5 a guidepost.</p> <p>6 In 2022, you testified in a matter in</p> <p>7 Florida that it was north of 1.1 million.</p> <p>8 A. Yeah.</p> <p>9 Q. I'm trying to figure out where has it</p> <p>10 gone from your testimony in 2022.</p> <p>11 A. Probably close to 1.5.</p> <p>12 (Rannazzisi Deposition Exhibit 2 marked</p> <p>13 for identification and attached to the</p> <p>14 transcript.)</p> <p>15 BY MR. GIBBONS:</p> <p>16 Q. I'm going to show you what we'll have</p> <p>17 marked as Exhibit Number 2 and ask if you</p> <p>18 recognize that.</p> <p>19 A. Yes.</p> <p>20 Q. Can you tell us what that is?</p> <p>21 A. That is my bill for this litigation.</p> <p>22 Q. Okay. When you say a bill for this</p>	<p style="text-align: right;">Page 56</p> <p>1 dep?</p> <p>2 A. Read my reports. Went over the statute</p> <p>3 and regulations again. Just went over documents.</p> <p>4 Documents were a big deal. I wanted to just go</p> <p>5 through the documents one more time, make sure I</p> <p>6 had all of the documents in my head. You know,</p> <p>7 other than that, that's it.</p> <p>8 Q. And I don't want to get into the</p> <p>9 substance of any conversations you would have had</p> <p>10 with counsel, but did you meet with counsel prior</p> <p>11 to this dep?</p> <p>12 A. I met with counsel for about a half hour</p> <p>13 over the phone.</p> <p>14 Q. So the other 19-1/2 hours or so that you</p> <p>15 estimate spending in preparation was you reviewing</p> <p>16 documents.</p> <p>17 A. Yeah, I didn't even include that, to be</p> <p>18 honest with you. Yeah.</p> <p>19 Q. Okay. I want to go back to your report.</p> <p>20 We're done with that.</p> <p>21 VIDEO TECHNICIAN: Excuse me, Counsel.</p> <p>22 Could you move your water bottle?</p>
<p style="text-align: right;">Page 55</p> <p>1 litigation, this is the case that involves Tarrant</p> <p>2 County and Albertsons, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you've billed \$90,050; is that</p> <p>5 right?</p> <p>6 A. Yes. Since October of '23.</p> <p>7 Q. And I'm assuming you've recorded more</p> <p>8 hours on this matter; is that right?</p> <p>9 A. I have, but not -- just in preparation</p> <p>10 for and then the deposition, so it won't be that</p> <p>11 much.</p> <p>12 Q. Is that the total billing in relation to</p> <p>13 this matter?</p> <p>14 A. Except for the deposition today and the</p> <p>15 prep -- two days of prep or three days of prep or</p> <p>16 whatever.</p> <p>17 Q. How many hours did you spend preparing</p> <p>18 for the deposition?</p> <p>19 A. I didn't bring that with me, but --</p> <p>20 Q. Generally.</p> <p>21 A. Probably 20.</p> <p>22 Q. And what did you do to prepare for the</p>	<p style="text-align: right;">Page 57</p> <p>1 BY MR. GIBBONS:</p> <p>2 Q. Okay. You have Exhibit Number 1 in front</p> <p>3 of you?</p> <p>4 A. Yes.</p> <p>5 Q. Now, in reading pages 1 to 22 -- and</p> <p>6 please feel free to leaf through it.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is it fair for me to say that almost all</p> <p>9 of that was copied from other reports you had</p> <p>10 previously written?</p> <p>11 MR. MIGLIORI: Objection to form.</p> <p>12 THE WITNESS: Yeah, pretty much. Yeah.</p> <p>13 MR. GIBBONS: Let me show you what we're</p> <p>14 going to mark as Exhibit Number 3.</p> <p>15 MS. MANKOWSKI: Can we go off the record</p> <p>16 for a minute?</p> <p>17 MR. MIGLIORI: Sure.</p> <p>18 MR. GIBBONS: We're going to go off the</p> <p>19 record for one second.</p> <p>20 VIDEO TECHNICIAN: The time is 10:07 a.m.</p> <p>21 We're off the record.</p> <p>22 (Discussion off the record.)</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 VIDEO TECHNICIAN: The time is 10:08 a.m. 2 We're on the record. 3 (Rannazzisi Deposition Exhibit 3 marked 4 for identification and attached to the 5 transcript.) 6 BY MR. GIBBONS: 7 Q. Mr. Rannazzisi, I have in front of you 8 what we've marked as Exhibit Number 3, which is an 9 expert report by yourself dated August 22, 2022. 10 Do you have that? 11 A. Yes. 12 Q. Okay. On page 1 of Exhibit Number 3, you 13 also start with an executive summary. 14 Do you see that? 15 A. Yes. 16 Q. And in that first paragraph, you are 17 discussing the distribution practices of CVS, 18 Kroger, Meyer, Walgreens, and Walmart; is that 19 right? 20 A. Yes. 21 Q. And in the second paragraph -- would it 22 be fair to say, if I compared your second</p>	<p style="text-align: right;">Page 60</p> <p>1 THE WITNESS: Yes, sir. 2 MR. GIBBONS: Let me show you what we'll 3 mark as Exhibit Number 4. 4 (Rannazzisi Deposition Exhibit 4 marked 5 for identification and attached to the 6 transcript.) 7 BY MR. GIBBONS: 8 Q. And for the record, this is an expert 9 report of yourself dated January 24, 2024? 10 A. Yes. 11 Q. And if I turn to page 1 of this report, 12 would it be fair to say that you are basically 13 alleging the same SOM deficiencies against Kroger 14 and Publix? 15 MR. MIGLIORI: Objection to form. 16 THE WITNESS: Yes. 17 BY MR. GIBBONS: 18 Q. And does it basically read the same 19 except for the names of the parties and the 20 counties? 21 A. Yes. 22 Q. Do you have any idea as to what the MME</p>
<p style="text-align: right;">Page 59</p> <p>1 paragraph on Exhibit Number 3 to your third 2 paragraph of Exhibit Number 1, they basically say 3 the same thing -- 4 MR. MIGLIORI: Objection. 5 BY MR. GIBBONS: 6 Q. -- except for the names of the parties? 7 MR. MIGLIORI: Objection. Speaks for 8 itself. 9 THE WITNESS: Yes. And the counties. 10 Yes. 11 BY MR. GIBBONS: 12 Q. And the counties. 13 And in relation to CVS, Kroger, Meyer, 14 Walgreens, and Walmart, your opinion was that they 15 also failed to have effective controls against the 16 diversion of controlled substances through their 17 failure to design and operate a SOMs program 18 reasonably calculated to detect and stop 19 suspicious orders; is that right? 20 MR. MIGLIORI: Objection to form. 21 Document speaks for itself. 22 Go ahead.</p>	<p style="text-align: right;">Page 61</p> <p>1 market share for those seven companies were in 2 Tarrant County for the years you examined, 2006 to 3 2014? 4 A. No. 5 Q. If we put aside independent pharmacies, 6 would you agree with me that those seven companies 7 captured a very large percentage of the remaining 8 market share as defined by MME? 9 A. Well, I can't agree with you because I 10 don't know the exact MMEs in total. So I couldn't 11 -- I'm sure that, you know, together, they have a 12 substantial amount, but I never looked at that, to 13 be honest with you. 14 Q. Okay. But it wouldn't surprise you that 15 those seven would have a substantial market share 16 as either defined by MME or some other relevant 17 factor; is that fair to say? 18 MR. MIGLIORI: Objection to form. 19 THE WITNESS: I -- that wouldn't surprise 20 me, no. 21 BY MR. GIBBONS: 22 Q. Okay. From the time frame of 2006 to</p>

16 (Pages 58 - 61)

<p style="text-align: right;">Page 62</p> <p>1 2014, are you aware of any distributor that had an 2 effective SOM program? 3 A. Well, I don't know because all the 4 distributors -- I didn't -- I haven't looked at 5 every distributor. I've only looked at certain 6 distributors. 7 Q. And that's fair, but that's not my 8 question. 9 I'm asking you, as you sit here now, can 10 you independently identify one distributor that, 11 in your opinion, had an effective SOM program for 12 these years 2006 to 2014? 13 MR. MIGLIORI: Objection to form. 14 THE WITNESS: No. 15 BY MR. GIBBONS: 16 Q. Do you have any reasonable basis for 17 believing that any distributor had any effective 18 SOM program during those years? 19 A. The distributors that I reviewed did not 20 have an effective SOM program. I can't tell you 21 what other -- I don't know what I don't know. But 22 the distributors that I reviewed did not have</p>	<p style="text-align: right;">Page 64</p> <p>1 going to ask you to turn to page 8. 2 Are you there? 3 A. Yes. 4 Q. Okay. Under the heading suspicious 5 orders, you write, A key component to the 6 reporting and security requirements is the 7 requirement to design and operate a system to 8 detect and disclose to the registrant suspicious 9 orders which include orders of unusual size, 10 orders deviating substantially from a normal 11 pattern, and orders of unusual frequency. 12 Do you see that? 13 A. Yes, sir. 14 Q. And then you cite 21 CFR 1301.74(b), 15 right? 16 A. Yes. 17 Q. Now, in previous testimony -- and I'm 18 happy to give you that if you'd like to see it -- 19 you've testified, quote, over and over again that 20 1301.74(b) is a very simple provision. 21 A. Yes. 22 Q. Do you agree with that statement today?</p>
<p style="text-align: right;">Page 63</p> <p>1 effective SOM programs. 2 Q. And cumulatively you've been paid 3 \$1.5 million to look into this area; is that fair 4 to say? 5 MR. MIGLIORI: Objection to form and 6 scope. 7 THE WITNESS: That's fair, to look at the 8 SOM programs. Yes. 9 BY MR. GIBBONS: 10 Q. And in all the work you've done, can you 11 name one distributor that you believe had 12 effective SOMs programs? 13 MR. MIGLIORI: Objection. Same 14 objections. 15 THE WITNESS: Based on the information 16 that I reviewed, the internal documents, their 17 policies, procedures, and protocols, no. 18 BY MR. GIBBONS: 19 Q. I'm going to ask you to turn to Exhibit 1 20 now. I'm mostly done with those other exhibits. 21 A. Okay. Great. 22 Q. This is back on Exhibit Number 1. I'm</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Yes. 2 Q. Okay. And as you've previously 3 testified, there's three basic criteria to that, 4 right? Unusual size, unusual frequency, or an 5 order deviating substantially from the norm. 6 A. Yes. That's why it says "which include." 7 I mean, it could be expanded out from that, but 8 that's the foundational baseline, those three. 9 MR. GIBBONS: Let me mark as Exhibit 10 Number 5 testimony you've previously given. 11 (Rannazzisi Deposition Exhibit 5 marked 12 for identification and attached to the 13 transcript.) 14 BY MR. GIBBONS: 15 Q. And for the record, Exhibit Number 5 is a 16 deposition transcript dated December the 14th, 17 2022. 18 A. Uh-huh. 19 Q. Do you have that in front of you? 20 A. Yes. 21 Q. I just want to ask you about one 22 statement you make in there. And I'm -- would ask</p>

<p style="text-align: right;">Page 66</p> <p>1 you to turn to page 46.</p> <p>2 A. Okay. Got it.</p> <p>3 Q. And read to yourself beginning on line 20</p> <p>4 through the end of that answer, which stops on</p> <p>5 page 47.</p> <p>6 MR. MIGLIORI: I just want to make sure</p> <p>7 we're on the same place. You said page 46?</p> <p>8 MR. GIBBONS: Yeah. On the bottom, line</p> <p>9 20. Starting with, "Look, the beauty of 1301.74."</p> <p>10 MR. MIGLIORI: I just wanted to make</p> <p>11 sure. You asked him to start in the middle of an</p> <p>12 answer. I just --</p> <p>13 MR. GIBBONS: Oh, yeah, you can --</p> <p>14 MR. MIGLIORI: -- encourage you to read</p> <p>15 the question and the --</p> <p>16 MR. GIBBONS: -- whole thing if you want.</p> <p>17 MR. MIGLIORI: -- answer, not just half</p> <p>18 the answer.</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MR. GIBBONS:</p> <p>21 Q. I'm going to ask you a question.</p> <p>22 Where -- you say, and I quote, "I just, it's so</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. You don't write code?</p> <p>2 A. No, I do not.</p> <p>3 Q. And you've never created software of any</p> <p>4 kind; is that right?</p> <p>5 A. That is correct.</p> <p>6 Q. So what is your basis for saying it's</p> <p>7 easy to adopt a system to those three criteria of</p> <p>8 the regulation?</p> <p>9 MR. MIGLIORI: Objection to form.</p> <p>10 THE WITNESS: Because people were running</p> <p>11 manual systems looking at that information. The</p> <p>12 fact is that everybody goes to unusual size</p> <p>13 because that's the low-hanging fruit. It's easy.</p> <p>14 Maybe unusual frequency. But no one is doing a</p> <p>15 substantial deviation, and that is fairly easy.</p> <p>16 And if you'd like, I could expand on</p> <p>17 that.</p> <p>18 BY MR. GIBBONS:</p> <p>19 Q. No. I just want to get at this point,</p> <p>20 the basis for you asserting that it's easy to</p> <p>21 adapt a system to the three criteria of that</p> <p>22 regulation.</p>
<p style="text-align: right;">Page 67</p> <p>1 easy to adapt any system to that three criteria,</p> <p>2 the baseline, the foundational criteria of</p> <p>3 1301.74(b)."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you still believe that's true as you</p> <p>7 sit here today?</p> <p>8 MR. MIGLIORI: Objection. Out of</p> <p>9 context.</p> <p>10 Go ahead.</p> <p>11 THE WITNESS: Yes, I do.</p> <p>12 BY MR. GIBBONS:</p> <p>13 Q. And I think you previously testified, but</p> <p>14 I just want to make sure, you don't have any tech</p> <p>15 experience; is that right?</p> <p>16 A. No, I don't have any tech experience.</p> <p>17 Q. And you've never adapted a computer</p> <p>18 system for a company; is that true?</p> <p>19 A. No, I have not.</p> <p>20 Q. You've never written or created</p> <p>21 algorithms; is that right?</p> <p>22 A. That is correct.</p>	<p style="text-align: right;">Page 69</p> <p>1 I heard you say what people focused on.</p> <p>2 A. Uh-huh.</p> <p>3 Q. But I'm asking for any basis you have in</p> <p>4 your background to say it's easy to adopt a system</p> <p>5 to those three criteria.</p> <p>6 MR. MIGLIORI: Objection to form.</p> <p>7 Go ahead.</p> <p>8 THE WITNESS: And that's exactly why the</p> <p>9 department and DEA does not tell somebody how to</p> <p>10 create a system. It is easy. It is easy, and I'm</p> <p>11 sure there are companies out there doing it now.</p> <p>12 But if you don't put the time and the</p> <p>13 effort to determine how you want to create your</p> <p>14 system and how you want it to operate, and if you</p> <p>15 don't have the resources to operate the system and</p> <p>16 to conduct due diligence investigations, then it's</p> <p>17 going to crash and burn.</p> <p>18 But -- it just depends on the will of the</p> <p>19 company that's operating the system to ensure that</p> <p>20 it operates appropriately. So...</p> <p>21 BY MR. GIBBONS:</p> <p>22 Q. Okay. And I appreciate that having the</p>

<p style="text-align: right;">Page 70</p> <p>1 desire and the will to do that is one thing.</p> <p>2 My question is, though, what is your</p> <p>3 background to inform a jury that it's easy to</p> <p>4 adopt a system to those three regulations?</p> <p>5 MR. MIGLIORI: Objection to form.</p> <p>6 THE WITNESS: My background as a</p> <p>7 pharmacist and as a regulator, seeing the systems</p> <p>8 and evaluating systems in my role as the deputy</p> <p>9 assistant administrator of the Drug Enforcement</p> <p>10 Administration, I think I have a pretty good</p> <p>11 background on what could be adapted and how it</p> <p>12 could be adapted.</p> <p>13 It's -- again, I have no -- no doubt that</p> <p>14 developing the system is not that difficult. It's</p> <p>15 putting the time and energy in the system.</p> <p>16 My background is the head regulator of</p> <p>17 controlled substances for the Department of</p> <p>18 Justice.</p> <p>19 BY MR. GIBBONS:</p> <p>20 Q. But I thought you testified you had never</p> <p>21 seen a SOMs program that didn't have deficiencies.</p> <p>22 A. Well, when I was looking at them. But</p>	<p style="text-align: right;">Page 72</p> <p>1 looking at, you know, certain distributors, I was</p> <p>2 looking at what they had functionally from 2005 to</p> <p>3 2014. So I'm sure they've changed. They'd be</p> <p>4 silly not to change because their systems were not</p> <p>5 in compliance with the Act.</p> <p>6 BY MR. GIBBONS:</p> <p>7 Q. I appreciate that, but I'm still trying</p> <p>8 to boil down to your basis for saying it's easy to</p> <p>9 adopt a system to those three criteria if, in</p> <p>10 fact, you don't write code, you don't have a tech</p> <p>11 background, and you've never seen a system that</p> <p>12 didn't have deficiencies.</p> <p>13 MR. MIGLIORI: Objection to form.</p> <p>14 Go ahead.</p> <p>15 THE WITNESS: Again, because during that</p> <p>16 time period that I reviewed, they were not</p> <p>17 appropriately monitoring, overseeing, and</p> <p>18 developing systems that could do what is supposed</p> <p>19 to be done.</p> <p>20 I don't know what their reasons are, but</p> <p>21 it's a very, very simple three-criteria system.</p> <p>22 And my background is I was a regulator for those</p>
<p style="text-align: right;">Page 71</p> <p>1 all those SOM systems have changed. Since we've</p> <p>2 done litigation on them, I'm sure they've changed.</p> <p>3 Q. Okay. I just want to flush this out.</p> <p>4 You previously testified, I believe, that</p> <p>5 you never saw a SOMs program of a distributor that</p> <p>6 didn't have deficiencies.</p> <p>7 Did I hear that correct?</p> <p>8 A. That's correct.</p> <p>9 MR. MIGLIORI: Objection. Misstates the</p> <p>10 full testimony.</p> <p>11 Go ahead.</p> <p>12 THE WITNESS: That's correct. From the</p> <p>13 systems that I reviewed -- and depending on the</p> <p>14 years I reviewed it -- those systems were not</p> <p>15 operationally compliant with the law. However,</p> <p>16 things have changed. I have not had the</p> <p>17 opportunity to go back in and look at the systems</p> <p>18 that were being operated by certain companies.</p> <p>19 Because remember, we were looking at systems, you</p> <p>20 know, between 2006 and 2014, and then we expanded</p> <p>21 into 2016 or '17 later in the litigation, and '18.</p> <p>22 But, you know, early on, when I was</p>	<p style="text-align: right;">Page 73</p> <p>1 companies. And if it was something that was so</p> <p>2 difficult, I'm pretty sure I would have heard from</p> <p>3 the companies saying, we can't do this. But in</p> <p>4 fact, they could.</p> <p>5 Because in 2008, they -- what is it?</p> <p>6 The -- one of the organizations -- I think it was</p> <p>7 the HDMA at that point in time -- released a</p> <p>8 document showing what is required within those</p> <p>9 systems. And that came right from HDMA, which I'm</p> <p>10 pretty sure everybody was a member of.</p> <p>11 So if HDMA could do it and could create</p> <p>12 a -- policies, procedures, and protocols for a</p> <p>13 system, I'm pretty sure the companies could.</p> <p>14 BY MR. GIBBONS:</p> <p>15 Q. Aside from the answer you've just given,</p> <p>16 is there any other basis for you to state that</p> <p>17 it's easy to adopt a system to those three</p> <p>18 criteria?</p> <p>19 MR. MIGLIORI: Objection to form.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: No, I'm pretty sure that</p> <p>22 covered it.</p>

<p style="text-align: right;">Page 74</p> <p>1 BY MR. GIBBONS:</p> <p>2 Q. You stated in one of your answers that</p> <p>3 you think that there are companies who are doing</p> <p>4 it today.</p> <p>5 Is that a guess or do you know of</p> <p>6 companies that are writing those sorts of SOMs</p> <p>7 algorithms and code today?</p> <p>8 MR. MIGLIORI: Objection to form.</p> <p>9 THE WITNESS: I think that that would be</p> <p>10 a guess, but it's based on the fact that I know</p> <p>11 what their systems were and I know what happened</p> <p>12 in the litigation. And these are major</p> <p>13 corporations. I'm pretty sure that a major</p> <p>14 corporation is not going to just fall back and</p> <p>15 say, okay, well, we're just going to continue to</p> <p>16 do it and hope we don't get caught again. So my</p> <p>17 guess is they did it.</p> <p>18 I'd like to think they did it because</p> <p>19 these systems are important to maintain effective</p> <p>20 controls against diversion and prevent the</p> <p>21 diversion of controlled substances into the</p> <p>22 community.</p>	<p style="text-align: right;">Page 76</p> <p>1 BY MR. GIBBONS:</p> <p>2 Q. And that's fair. I'm not asking you --</p> <p>3 A. Yeah.</p> <p>4 Q. -- whether you looked at it. I'm asking</p> <p>5 if you know, given your vast experience in this</p> <p>6 area, whether there were companies that marketed</p> <p>7 their ability to create such systems for</p> <p>8 distributors back in that time frame, 2006 to</p> <p>9 2014?</p> <p>10 MR. MIGLIORI: Same objection.</p> <p>11 THE WITNESS: I don't know.</p> <p>12 MR. MIGLIORI: Want to do a bio break?</p> <p>13 MR. GIBBONS: Yeah. Please tell me if</p> <p>14 you need a break.</p> <p>15 THE WITNESS: No, I'm okay. It's up to</p> <p>16 you guys. I'm fine either way.</p> <p>17 MR. GIBBONS: We can take five minutes.</p> <p>18 MR. MIGLIORI: If you don't mind.</p> <p>19 MR. GIBBONS: Yeah, sure. Let's go off</p> <p>20 the record for five minutes or so.</p> <p>21 VIDEO TECHNICIAN: The time is 10:27 a.m.</p> <p>22 This ends unit 1. We're off the record.</p>
<p style="text-align: right;">Page 75</p> <p>1 BY MR. GIBBONS:</p> <p>2 Q. But as you sit here today, you can't name</p> <p>3 me a company that is doing that work, can you?</p> <p>4 A. I cannot because I've not reviewed their</p> <p>5 current systems.</p> <p>6 Q. And somewhere in your answer I think you</p> <p>7 said that there might have been companies doing it</p> <p>8 back in the time frame that you looked at, 2006 to</p> <p>9 2014.</p> <p>10 Did I hear that right?</p> <p>11 A. There could have been. I just didn't</p> <p>12 look at all companies. I just looked at --</p> <p>13 Q. Do you know for a fact of any company</p> <p>14 that was doing that for distributors or was</p> <p>15 offering that for sale to distributors back in</p> <p>16 that time frame?</p> <p>17 MR. MIGLIORI: Objection to form. Asked</p> <p>18 and answered.</p> <p>19 THE WITNESS: I don't know if there were</p> <p>20 any companies doing it at that point in time</p> <p>21 because I have not seen every companies'</p> <p>22 documents, policies, and procedures.</p>	<p style="text-align: right;">Page 77</p> <p>1 (A recess was taken.)</p> <p>2 VIDEO TECHNICIAN: The time is 10:36 a.m.</p> <p>3 This begins unit number 2. We're on the record.</p> <p>4 BY MR. GIBBONS:</p> <p>5 Q. Mr. Rannazzisi, could you turn to page 9</p> <p>6 of your expert report, which is Exhibit 1?</p> <p>7 A. Yes.</p> <p>8 Q. And at the very top you state, In my</p> <p>9 opinion, any mechanism or process designed to</p> <p>10 detect orders that are of unusual size, unusual</p> <p>11 frequency, or deviate substantially from a normal</p> <p>12 pattern is designed to detect suspicious orders.</p> <p>13 Do you see that?</p> <p>14 A. Okay. It says, I am aware, not in my</p> <p>15 opinion -- okay. I see that. In my opinion --</p> <p>16 yeah.</p> <p>17 Q. Yeah, feel free to read it.</p> <p>18 A. Yes. Okay.</p> <p>19 Q. Is there a threshold where size becomes</p> <p>20 unusual?</p> <p>21 A. It's -- like everything else, it depends</p> <p>22 on the pharmacy. Depends on the system that</p>

<p style="text-align: right;">Page 78</p> <p>1 you're operating. There's no one size fits all. 2 That's why you have to know your clients, your 3 customers. 4 Q. Is there any research you're familiar 5 with that informs a company when size becomes 6 unusual? 7 A. Any research? 8 Q. Correct. 9 A. Conducted by? 10 Q. Anyone. 11 A. I -- unless whoever the researcher is 12 knows your customer base, no. 13 Q. Is there any statistical test you're 14 aware of to apply to determine when size becomes 15 unusual? 16 A. It's -- a statistical test? 17 Q. Correct. 18 A. No. 19 Q. And if I asked you the same questions 20 about frequency, would they be the same answers? 21 MR. MIGLIORI: Objection to form. 22 THE WITNESS: I think with frequency,</p>	<p style="text-align: right;">Page 80</p> <p>1 research would encompass looking at third-party 2 vendor sales as well. 3 Q. And I appreciate that statement. My 4 question, though, is more broad. 5 Is there any research that you can think 6 of by an independent third party, regulatory 7 agency, anyone, that would inform a company as to 8 when frequency becomes unusual? 9 MR. MIGLIORI: Objection to form. 10 THE WITNESS: That would have to be under 11 the company. The company would have to do that 12 research. 13 BY MR. GIBBONS: 14 Q. And are you aware of any statistical test 15 that a company should apply to determine when 16 frequency becomes unusual? 17 MR. MIGLIORI: Objection to form. 18 THE WITNESS: Again, unless the company 19 is actually monitoring third-party vendor sales 20 and they know of third-party vendor sales to their 21 particular pharmacies, I don't know of any. 22</p>
<p style="text-align: right;">Page 79</p> <p>1 it's, again, depending on your customer base and 2 how the frequency limitation is being breached. 3 BY MR. GIBBONS: 4 Q. So you're not aware of any research that 5 would inform a company as to when frequency 6 becomes unusual, as that term is used in the reg? 7 MR. MIGLIORI: Objection. 8 THE WITNESS: That's -- it's an 9 interesting question. 10 BY MR. GIBBONS: 11 Q. Thank you. 12 A. It's not breached -- okay. So you might 13 have a company that does -- I don't know -- two 14 distributions per week in a certain pharmacy, 15 okay, but that company is not monitoring what that 16 pharmacy is purchasing from a third-party vendor, 17 so they'll never know what the frequency breach is 18 because they're not monitoring the third-party 19 vendor sales. 20 So it's difficult if your system is not 21 accounting for third-party vendors. 22 So -- you know, so I don't know what</p>	<p style="text-align: right;">Page 81</p> <p>1 BY MR. GIBBONS: 2 Q. Let's assume, for purposes of this 3 question, that a company is monitoring third-party 4 orders as it relates to the answer you just gave. 5 Would there be any statistical test 6 you're aware of to determine when frequency became 7 unusual? 8 MR. MIGLIORI: Objection to form. 9 THE WITNESS: That would have to be the 10 company's statistical analysis. It's all part of 11 operating the SOM. 12 So I'm not aware of any, but I would hope 13 that the companies would be doing that. 14 BY MR. GIBBONS: 15 Q. And in writing your report and coming up 16 with your opinion, did you apply any test in 17 relation to Albertsons' customer base, whether it 18 be in relation to unusual size or unusual 19 frequency? 20 A. I went -- I looked at the Albertsons 21 policies and procedures. From the policies and 22 procedures, then I looked at all of the documents</p>

<p style="text-align: right;">Page 82</p> <p>1 related to the operation of their systems. Then I 2 looked at the depositions. And from that, I 3 formulated my response. 4 I didn't do any independent research on 5 each particular pharmacy. 6 Q. So it would be fair to say that you 7 didn't look at any statistics or data to come up 8 with your opinions as it relates to Albertsons' 9 customer base and whether it violated the reg as 10 it relates to unusual size or frequency? 11 MR. MIGLIORI: Objection to form. 12 THE WITNESS: I didn't have to. If 13 Albertsons was following their policies and 14 procedures and what their employees and former 15 employees were saying they were doing, they were 16 not operating a system that maintained effective 17 controls against diversion, regardless of what 18 their pharmacies were doing. Their systems were 19 not operating appropriately. 20 BY MR. GIBBONS: 21 Q. And I've read that in your report, but 22 that wasn't my question. My question wasn't</p>	<p style="text-align: right;">Page 84</p> <p>1 and fifth bullet point to yourself. 2 A. The second and -- which -- 3 Q. The second one starts with -- 4 A. Yeah. 5 Q. -- "meeting or exceeding a threshold for 6 a certain drug product and dosage strength." 7 Do you see that? 8 A. Yes. 9 Q. Okay. Skip down two more. "Anomalies 10 with respect" -- read that one. 11 A. Yes. 12 Q. And then fifth one starts with "Purchases 13 of high-dose-strength formulations." Do you see 14 that? 15 A. Yes. 16 Q. What is the basis in research for using 17 dosage strength as a criteria to detect suspicious 18 orders? 19 A. Well, that's -- basically, if you look at 20 the previous cases done on pharmacies, which are 21 available and which we expected the companies to 22 look at -- it was on the DEA website and in the</p>
<p style="text-align: right;">Page 83</p> <p>1 whether you had to do it on the data. I'm asking 2 if you did it. 3 Did you do anything like that? 4 MR. MIGLIORI: Objection to form. Asked 5 and answered. 6 THE WITNESS: No, I did not. 7 BY MR. GIBBONS: 8 Q. Let's turn to page 14 of your report, 9 Exhibit 1. 10 And in the second paragraph under 11 threshold criteria -- do you see that? 12 A. Yes, sir. 13 Q. You write that complex systems may 14 analyze the data collected and then focus on any 15 number of the following nonexclusive criteria to 16 set a variety of reasonable thresholds. 17 Do you see that? 18 A. Yes, sir. 19 Q. And then you outline seven bullet points 20 there; is that right? 21 A. Yes. 22 Q. I want you to read the second, fourth,</p>	<p style="text-align: right;">Page 85</p> <p>1 Federal Register -- you'll see that most 2 pharmacies that are operating illegally were doing 3 large -- large dose controlled substances, such as 4 oxy 30. 5 The -- the cases speak for themselves. 6 If you're a person with opioid use disorder or 7 you're a person who's selling drugs that are 8 illegally obtained from pharmacies, you're going 9 to get the highest dose possible. And the oxy 30s 10 and the oxy 15s were the gold standard for opioid 11 use disorder people and also people who were 12 illegally selling. They needed those drugs. 13 So when you have a pharmacy, say, in 14 Florida and they're lined up outside the door and 15 everybody is getting an oxycodone 30-milligram 16 prescription filled, that is a problem. And 17 that's reflected in all of the cases that we've 18 done. 19 So if you read the cases and you looked 20 at the cases -- for instance, I know that 21 Walgreens was mentioned in one of the cases and so 22 was McKesson where they were talking about it.</p>

<p style="text-align: right;">Page 86</p> <p>1 All you had to do was look at the McKesson case or 2 the Walgreens case and you could see that the main 3 problem was oxy 30 or oxy 15 or oxy 10. 4 And -- so that's why it's in there. 5 Q. Okay. And I heard that answer, previous 6 cases. 7 Is there anything else besides what you 8 just said in your answer to support the basis and 9 research for using dosage strength as a criteria 10 to detect suspicious orders? 11 A. Absolutely. Whenever we did a pharmacy 12 diversion awareness conference, we talked about 13 the high-dose products. We talked about the 14 combination products using the three-drug 15 combination or three-drug panel. We explained 16 why. When we do corresponding responsibility 17 presentations, we always talked about that. 18 And I did those personally. I went out 19 and did them when I was with DEA. Unless I was 20 double-booked somewhere, it was my presentation 21 that they were listening to. And the reason we 22 did that was because we wanted them to understand</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Uh-huh. 2 Q. Yes? 3 A. Yes. 4 Q. Do you have any evidence that that ever 5 happened at any Albertsons store? 6 A. Evidence of -- that I found in the 7 records that there were some anomalies in -- 8 Q. No, that wasn't my -- 9 A. -- dispensing -- 10 Q. -- question. 11 A. But as far as patients lined up out the 12 door? No, there's nothing in the documents that 13 show that. 14 Q. Let me ask you to turn the page to 15 page 15. And under the first two bullet points at 16 the top, I'm going to ask you about that first 17 sentence, which states, Customer-specific 18 thresholds for a basic class. 19 Do you see that? 20 A. Yes. 21 Q. Could you read that to yourself? 22 A. Yes.</p>
<p style="text-align: right;">Page 87</p> <p>1 that we were the -- I was the person, and this is 2 what I'm telling you. This is why you have to 3 look at these drugs. 4 And so it was pretty -- it was based on 5 our cases, based on what we saw, based on what the 6 state and local officers were telling us, what 7 they were seeing, you know, with boots on the 8 ground. So that's where that came from. 9 Q. Okay. Now, in relation to Albertsons, 10 did you perform any analysis of dosage strength to 11 detect suspicious distribution transactions? 12 A. No, I did not. 13 Q. Did you perform any analysis as to 14 Albertsons in relation to the oxy 30s or the 15 oxy 15s, which you claim was a sign of potential 16 diversion? 17 A. It's a factor within the systems that 18 should be analyzed. But no, I did not do that. 19 Q. You used an example of some case in which 20 people were lined up outside of a pharmacist in 21 Florida, which is an indication of -- of potential 22 wrongdoing; is that right?</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Okay. So you're using that a company 2 should look at six to nine months of dispensing 3 data; is that what you write? 4 A. Yes. 5 Q. What is the basis in research for using 6 that time frame? 7 A. It establishes a pattern. And what you 8 could see -- generally, with drug seekers or -- 9 they share information with each other. So if a 10 pharmacy is starting -- is not doing the 11 appropriate corresponding responsibility, you'll 12 see a dramatic rise in a particular drug's 13 dispensing. And -- you'll see that, and it will 14 continue. And it might be under threshold or it 15 might not be under threshold. It might just not 16 be caught by threshold. 17 And so a six-month to nine-month period 18 will show that dramatic increase, which means that 19 the pharmacy should be looking at the 20 corresponding responsibility analysis of the 21 pharmacist within that -- you know, the company 22 should be looking at the corresponding</p>

<p style="text-align: right;">Page 90</p> <p>1 responsibility analysis within that pharmacy. 2 Q. Okay. I was specifically asking whether 3 this is your opinion that six to nine months sets 4 a pattern or whether there is any other basis in 5 research for using that time frame. 6 MR. MIGLIORI: Objection to form. 7 THE WITNESS: That's my opinion. And I 8 think my opinion is also based on looking at 9 previous cases and -- where we saw dramatic 10 increases in a particular dosage form over that 11 type of period to show that, you know, indeed, 12 there was an increase. There was never any 13 trough. There was always increase, increase, 14 increase, increase, increase. 15 BY MR. GIBBONS: 16 Q. Okay. So is the answer to my question, 17 no, there's no basis in research for using that 18 six to nine months of dispensing data? 19 MR. MIGLIORI: Objection. Asked and 20 answered. 21 THE WITNESS: It's my -- my opinion. 22 There's no basis in research, no.</p>	<p style="text-align: right;">Page 92</p> <p>1 pattern that was set in six months. 2 Q. Okay. But that's not my question. 3 I'm concentrating on your use of the six 4 to nine months of dispensing data to establish a 5 pattern. 6 Is it your belief that East Main Street 7 stands for that proposition? 8 A. It's my belief that East Main Street is 9 an example of a pharmacy that was showing a 10 pattern of several months. Yes. 11 Q. Okay. 12 A. Based on my -- 13 Q. Do you have any -- did you conduct any 14 analysis as to whether any Albertsons store or 15 pharmacy had a dramatic increase in the dosage of 16 its, let's say, oxys or hydros? 17 A. My job was to evaluate the systems that 18 were written in the depositions based on system. 19 I didn't do a by-pharmacy analysis. 20 Q. So in your last answer where you were 21 discussing a corresponding responsibility and that 22 high dosage could tip you off that there were</p>
<p style="text-align: right;">Page 91</p> <p>1 BY MR. GIBBONS: 2 Q. And -- 3 A. Well, hold on a second. Yeah, I think 4 there is a basis in research. East Main Street 5 Pharmacy. East Main Street Pharmacy was a 6 pharmacy in Ohio, Columbus, Ohio. And they showed 7 increases within a certain period of time, and it 8 was all from the same doctor, Dr. Volkman, and it 9 was from the same drug combination. 10 So yeah, I think the research shows that. 11 And I say six to nine months because, if you look 12 at a pharmacy and you're trying to maintain what 13 the pharmacy's dispensing and ordering patterns 14 are, that gives you a very, very good -- I think a 15 six-month is a minimum, but I think a six-month 16 will tell you a lot about that pharmacy. 17 Q. Is it your belief that East Main Street 18 outlined six to nine months of data as 19 establishing a pattern? 20 A. I think -- my belief is based on the fact 21 that when East Main Street started filling 22 prescriptions for Paul Volkman, that was the</p>	<p style="text-align: right;">Page 93</p> <p>1 abusers of that, you didn't do any of that 2 analysis in relation to Albertsons stores, right? 3 MR. MIGLIORI: Objection to form. And 4 misstates the testimony. 5 Go ahead. 6 THE WITNESS: No, I didn't do by 7 pharmacy. But after reviewing documents showing 8 increases in -- and looking at what the pharmacy 9 supervisors were saying and approving in threshold 10 increases and how quickly they were doing it and 11 for the excuses they were using, I didn't have to 12 look at the pharmacies. I could tell that the 13 pharmacy increases, in my opinion, were related to 14 diversion. And we could go through them if you'd 15 like. They're in the report. 16 BY MR. GIBBONS: 17 Q. Okay. Yeah, no, I've read them. 18 But as it relates to dosages, you didn't 19 get down to that detail. 20 A. Well, actually, in there, they were 21 related to dosages. 22 Q. You believe that you saw data at</p>

<p style="text-align: right;">Page 94</p> <p>1 Albertsons stores that will stand for the 2 proposition that there was an increase of dosages 3 to various controlled substances that would have 4 led a good compliance department to understand 5 that there was diversion? 6 A. Yes. Because they were breaching 7 threshold. 8 The reason those pharmacies -- and the 9 reason those particular instances were in the 10 report is because somebody had to increase a 11 threshold. Okay? And the question is, so, if you 12 increase the threshold, how did you -- what was -- 13 what were you looking at? And based on the 14 examples that were -- that I reviewed in the 15 documents, it didn't look like they were looking 16 at anything. 17 Q. Okay. We'll get to that. 18 A. Okay. 19 Q. All right. In the same paragraph towards 20 the bottom, you state, A reasonable threshold 21 would also incorporate a method to avoid threshold 22 creep and to prevent use of inflated historical</p>	<p style="text-align: right;">Page 96</p> <p>1 is able to actually identify an order of interest 2 for further evaluation. 3 Q. And that's the method? 4 A. Well, that's one of the methods. Yeah. 5 Q. Is there any other method? 6 A. Of? For threshold creep? 7 Q. Yeah. 8 A. That's the main one, when you have a 9 rolling -- I'm sure there are others, but the main 10 one I've seen over and over again is this idea 11 that you have a rolling average that's always 12 changed within a month, within 12 orders, within 13 20 orders. But there's always this idea that we 14 drop the last order, the oldest order, and the 15 newest order comes. That causes threshold creep. 16 Q. And you would agree with me that there 17 would be legitimate reasons for increased 18 thresholds, right? 19 A. Oh, yes. Absolutely. But that's why you 20 do due diligence. If you do due diligence, you'll 21 understand -- and you could document, well, there 22 was a reason: A surgical center just moved in</p>
<p style="text-align: right;">Page 95</p> <p>1 ordering patterns that do not reflect current 2 ordering patterns, such as re-evaluation of 3 customer thresholds at least annually. 4 Do you see that? 5 A. Yes. 6 Q. What is the method for avoiding threshold 7 creep? 8 A. Well, one of the biggest things to avoid 9 threshold creep is not having a rolling 10 increase -- a rolling number. 11 So when I talk about a rolling number, if 12 you use a certain time period to establish your 13 average and the last order period is dropped and a 14 new order period, you're always going to have -- 15 if you have a bad pharmacy, there's always going 16 to be an increase. And therefore, you're going to 17 see that threshold increase and increase and 18 increase up. That's called threshold creep. 19 And several systems that I've reviewed 20 have that kind of system where they use a rolling 21 average. Rolling average is not good, especially 22 if it inflates the threshold so high that no one</p>	<p style="text-align: right;">Page 97</p> <p>1 next door. 2 Q. Right. 3 A. An oncology center or an oncologist just 4 moved in. Absolutely. But if you don't do your 5 due diligence, you'd never know that. 6 Q. Okay. We'll get to that one. 7 Okay. I'm going to ask you to turn to 8 page 25. 9 A. Okay. 10 Q. And this is describing SOM period 1, 2001 11 to 2008 at Albertsons. 12 Do you see that? 13 A. Yes. 14 Q. And you state that this was Albertsons' 15 first attempt at drafting a formal SOMs program 16 that was occurring in 2001. 17 A. Yes. 18 Q. Is it your opinion that Albertsons did 19 not have a formal SOMs program prior to 2001? 20 A. Well, if they did, I don't believe it was 21 in a drafted form of policies and procedures. 22 So based on this draft, it was my opinion</p>

<p style="text-align: right;">Page 98</p> <p>1 that they never -- they didn't have it prior to</p> <p>2 this draft.</p> <p>3 Q. Any other basis for reaching that</p> <p>4 conclusion?</p> <p>5 A. Just based on this draft.</p> <p>6 Q. On the top of page 27 you state that this</p> <p>7 was Albertsons' first attempt at putting in a</p> <p>8 threshold system.</p> <p>9 Do you see that?</p> <p>10 A. Page 27?</p> <p>11 Q. Yeah.</p> <p>12 A. I don't -- page 27? Where is that?</p> <p>13 Q. Well, second full paragraph down it says,</p> <p>14 It appears that ACI -- meaning Albertsons -- did</p> <p>15 not have any threshold criteria to help it detect</p> <p>16 suspicious orders until this draft policy in</p> <p>17 October of 2001.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 A. And I didn't -- there was no documents</p> <p>22 prior to 2001 that showed that you guys had</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. At least that you saw, right?</p> <p>2 A. At least that I saw. But I'm guessing</p> <p>3 that I was provided with all the documents.</p> <p>4 Q. And you state there that Albertsons'</p> <p>5 threshold system was based on the store's</p> <p>6 historical order quantities.</p> <p>7 Do you find fault with that?</p> <p>8 A. If the historical order quantities are</p> <p>9 inflated due to a pharmacy not conducting</p> <p>10 corresponding responsibility accordingly, yes, I</p> <p>11 do, because you're allowing them to have an</p> <p>12 inflated level of threshold.</p> <p>13 So again, it goes back to the MOQ: How</p> <p>14 did you create the MOQ? What was the basis for</p> <p>15 your MOQ?</p> <p>16 Q. But my question is about Albertsons</p> <p>17 stores.</p> <p>18 Do you have any proof that these numbers</p> <p>19 were inflated because of a store not abiding by</p> <p>20 its corresponding responsibility?</p> <p>21 A. I don't have any information on the MOQ</p> <p>22 because it's never been documented anywhere.</p>
<p style="text-align: right;">Page 99</p> <p>1 anything.</p> <p>2 Q. Okay. And so the documents you reviewed</p> <p>3 led you to make that statement; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And then you state that -- in that same</p> <p>6 paragraph, The threshold system proposed in the</p> <p>7 draft policy was based on historical order</p> <p>8 quantities. This method does not consider that</p> <p>9 the historical purchases may be inflated due to a</p> <p>10 deficient or absent SOM program.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And why did you use the word "may"</p> <p>14 there?</p> <p>15 A. Well, because it could have been</p> <p>16 inflated. The only way to tell if it was inflated</p> <p>17 or not is to actually have some documentation</p> <p>18 showing how they created those max order</p> <p>19 quantities.</p> <p>20 Q. So you don't know one way or the other?</p> <p>21 A. No. Because there was no documentation</p> <p>22 to show how you create MOQs.</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. So you don't know one way or the other if</p> <p>2 these historical order quantities were inflated</p> <p>3 because of a store not abiding by its</p> <p>4 corresponding responsibilities; is that fair to</p> <p>5 say?</p> <p>6 A. I don't know because I don't have the</p> <p>7 MOQ. It's just -- but again, this is just on a</p> <p>8 threshold basis. So it's only looking at one of</p> <p>9 the three criteria. There was never a frequency</p> <p>10 evaluation, nor was there a substantial deviation</p> <p>11 evaluation. So...</p> <p>12 Q. Did you review any Albertsons documents</p> <p>13 prior to 2001?</p> <p>14 A. I think 2001 was the earliest, yes.</p> <p>15 Q. That you reviewed?</p> <p>16 A. That I reviewed, yes.</p> <p>17 Q. Did you ask anyone specifically if there</p> <p>18 were documents that predated 2001 that you wanted</p> <p>19 to review?</p> <p>20 MR. MIGLIORI: Objection.</p> <p>21 THE WITNESS: I just don't recall. I</p> <p>22 mean, I just -- I asked for all documents related</p>

<p style="text-align: right;">Page 102</p> <p>1 to the Albertsons SOMs. That was the first thing 2 I asked, I needed to see all documents related to 3 the SOMs. And once I had a handle on what the 4 SOMs looked like and compared it to the 5 depositions, then I had a better feel for what the 6 SOMs was. 7 BY MR. GIBBONS: 8 Q. In that same paragraph at the bottom 9 where you're defining the system being deficient, 10 you say the deficient [sic] is -- 11 VIDEO TECHNICIAN: Counsel -- 12 BY MR. GIBBONS: 13 Q. -- exponentially compounded in 14 Albertsons' case because Albertsons' pharmacies 15 could order from third-party vendors, thereby 16 circumventing the threshold process altogether and 17 hiding frequency anomalies in the ordering 18 patterns. 19 Do you see that? 20 A. Could you -- which paragraph are you -- 21 Q. Yeah. I'm on page 27. 22 A. Yeah.</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Do you have a recollection of how many 2 times that happened, or are you talking about a 3 single instance? 4 A. I'm pretty sure it was multiple 5 instances. 6 Q. Are you sure of that? 7 MR. MIGLIORI: Objection. The report 8 speaks -- 9 THE WITNESS: It's in the report. I 10 could go -- 11 MR. MIGLIORI: Hold on. Hold on. 12 THE WITNESS: Oh, I'm sorry. I'm sorry. 13 MR. MIGLIORI: Objection. The report 14 speaks for itself. 15 Go ahead. 16 THE WITNESS: I think it's -- if you 17 want, I can go back to the report and look, but 18 I'm pretty sure it's in here. 19 BY MR. GIBBONS: 20 Q. You're pretty sure that you detailed how 21 many times a third-party vendor would have -- 22 would have alerted Albertsons that they were over</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. And it's the second full paragraph. 2 MR. KOHLER: John, the videographer. 3 VIDEO TECHNICIAN: Your hand is blocking 4 the microphone. 5 BY MR. GIBBONS: 6 Q. Do you see where I'm at? The last 7 sentence of that paragraph. 8 A. Yes. Okay. I've got that. 9 Q. Right. So you're citing a deficiency 10 that Albertsons' pharmacies could order from a 11 third-party vendor; is that right? 12 A. Yes. 13 Q. Did you analyze how often that happened? 14 A. No, I did not. 15 Q. Did you do any quantitative analysis in 16 that area at all? 17 A. No. I didn't have to. It was in the 18 documents. There was issues, I believe, with one 19 of the third-party vendors where they were -- 20 where pharmacies were ordering over threshold. 21 And the third-party vendor was contacting 22 Albertsons.</p>	<p style="text-align: right;">Page 105</p> <p>1 their threshold? 2 MR. MIGLIORI: Objection to form. 3 Different question. 4 THE WITNESS: I don't know -- I didn't do 5 everything. I just -- there were certain things I 6 used as examples, and I'm pretty sure there were 7 multiple examples. But I -- if you want, we can 8 go through them. 9 BY MR. GIBBONS: 10 Q. No, that's fine. 11 Do you recall who the pharmacy needed to 12 notify if they did, in fact, order from a 13 third-party vendor at Albertsons? 14 A. It depends on what time period. 15 Q. Well, break it out for me. 16 A. If they were -- if they're doing CSOS, 17 there would be a CSOS administrator. If they were 18 doing manual handwritten 222 forms or they were 19 just ordering pursuant to a phone call, I don't 20 think they have to notify anybody. 21 There was nothing in the documents that 22 showed they had to notify anybody. So...</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. In your review of Albertsons' policies 2 and procedures, did you see whether anyone in 3 compliance was monitoring such third-party 4 ordering? 5 A. What time period? 6 Q. 2001 to 2014. 7 A. That's two different time periods. 8 Q. Well, you outlined the SOMs as being 2001 9 to 2008 and then '13 and '14 -- 10 A. Right. 11 Q. -- right? 12 Deal with each of those time periods, 13 then. 14 A. Well, 2001 to 2008, they were using the 15 max order quantity. And because of that, I don't 16 believe -- pharmacy compliance might have been 17 looking at it, but I don't see them making any 18 corrections to it. 19 In 2013, when they started again, I think 20 they were using a hybrid system. In 2008, they 21 also used repackers as well. And the repackers 22 were just looking for orders out of the ordinary.</p>	<p style="text-align: right;">Page 108</p> <p>1 monitors all distribution, not just ours. 2 And that was in, like, 2015 or '16. 3 Q. At the end there you say that This 4 ordering from third-party vendors would circumvent 5 the threshold process altogether in hiding 6 frequency anomalies in the ordering patterns. 7 Do you see that? 8 A. Where is that? 9 MR. MIGLIORI: What page? 10 BY MR. GIBBONS: 11 Q. The last sentence of the same paragraph 12 we were talking about. 13 A. Which -- I'm sorry. Which -- 14 MR. MIGLIORI: Yeah -- 15 BY MR. GIBBONS: 16 Q. Page 27, third paragraph -- 17 MR. MIGLIORI: Third paragraph. 18 BY MR. GIBBONS: 19 Q. Right where we were -- well, second full 20 paragraph. 21 A. Okay. (Reading.) 22 Yeah.</p>
<p style="text-align: right;">Page 107</p> <p>1 When we went to 2014 -- or 2013, they 2 were using the hybrid system, and one of the 3 systems was 20 percent over average. And they 4 used that right up until they -- they stopped 5 distributing out of Ponca City in 2016. 6 I'm pretty sure that there was no review 7 over that. All the reviews were being done at 8 the -- at the distributor level. And there's a 9 document -- I don't remember who wrote it, but 10 they were worried that they weren't looking at 11 third-party distributions. It was in a document. 12 And I think it's in the -- I'm sure it's in the 13 report. 14 Q. So you don't believe anyone was 15 monitoring third-party orders in the compliance 16 department at Albertsons in the earlier 2001 to 17 2008 time frame? 18 A. No. In fact, it's in -- again, there was 19 a document on a committee meeting -- I think it 20 was the PSSCC -- and one of the people was saying, 21 look, we need to monitor third-party vendors, and 22 I don't see us -- we need to find a system that</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Is that just a theoretical possibility, 2 or did you actually see proof in your records that 3 that happened at Albertsons? 4 A. Well -- 5 MR. MIGLIORI: Objection. It's 6 footnoted. 7 Go ahead. 8 THE WITNESS: I believe that that had 9 come out in depositions. But also, the fact is if 10 no one is monitoring it and you're ordering from a 11 third party, it will not show up on your frequency 12 evaluation. But it didn't matter because they 13 weren't monitoring frequency. 14 So, you know, looking at this, if you're 15 not monitoring frequency, you're not going to pick 16 it up. But even if you were monitoring frequency, 17 you wouldn't pick it up because you're not 18 monitoring third-party vendor frequency. 19 And in the documents, they were worried 20 about that. They were worried that people were 21 going to the third-party vendor to circumvent. 22</p>

<p style="text-align: right;">Page 110</p> <p>1 BY MR. GIBBONS:</p> <p>2 Q. Right. And that circles back to our</p> <p>3 question and answer about if anyone was monitoring</p> <p>4 third-party vendor orders, right?</p> <p>5 A. Yes.</p> <p>6 Q. All right. On page 28 --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- at the top, your heading is, Finalized</p> <p>9 standard operating procedures policy, August 2002,</p> <p>10 and distribution centers controlled drug manual,</p> <p>11 September of 2002.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And then in that paragraph below that</p> <p>15 heading, you note that Albertsons hired an</p> <p>16 external consultant, Buzzeo Associates.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. To help them draft these SOPs and drug</p> <p>20 manual?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Yes?</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. My understanding, he was the former</p> <p>2 deputy director of Office of Diversion Control.</p> <p>3 A. Yes. He was the number two at diversion</p> <p>4 control.</p> <p>5 Q. And did your careers overlap?</p> <p>6 A. No. He left way before I got to</p> <p>7 headquarters. Years before I got to headquarters.</p> <p>8 Q. Did he have a reputation in the industry</p> <p>9 that you're aware of?</p> <p>10 A. I don't generally pay attention to</p> <p>11 people's reputations. I take them for what my</p> <p>12 feeling is on them. And he seemed like a pretty</p> <p>13 straight guy.</p> <p>14 Q. Did he seem like he knew this area of the</p> <p>15 law -- not the law -- yeah, this area of</p> <p>16 regulation?</p> <p>17 MR. MIGLIORI: Objection. Foundation.</p> <p>18 THE WITNESS: He was deputy -- a deputy</p> <p>19 director of the Office of Diversion Control. If</p> <p>20 he didn't know the law, he was in bad straits.</p> <p>21 But I'm pretty sure he knew the law. That's the</p> <p>22 whole idea behind being the deputy director is</p>
<p style="text-align: right;">Page 111</p> <p>1 A. Yes.</p> <p>2 Q. And were you familiar with Buzzeo</p> <p>3 associates?</p> <p>4 A. I'm familiar with Ron Buzzeo. He was a</p> <p>5 DEA agent --</p> <p>6 Q. Okay.</p> <p>7 A. -- at one point in time.</p> <p>8 Q. Would you agree with me that that's</p> <p>9 appropriate for a company to hire outside experts</p> <p>10 to help them draft their policy and guidelines?</p> <p>11 A. Well, yes.</p> <p>12 Q. And in fact, that's something you did</p> <p>13 when you left the DEA, right?</p> <p>14 A. No, I never helped people -- no.</p> <p>15 Q. You didn't do that?</p> <p>16 A. It would -- what, help people document --</p> <p>17 or --</p> <p>18 Q. Companies or regulators?</p> <p>19 A. No. I've never worked for a company.</p> <p>20 Q. Okay. You said you know Ron Buzzeo?</p> <p>21 A. I know of Ron Buzzeo. I think I've met</p> <p>22 him a couple of times.</p>	<p style="text-align: right;">Page 113</p> <p>1 you're the guy who's going to evaluate, and you</p> <p>2 need to know the law to evaluate.</p> <p>3 BY MR. GIBBONS:</p> <p>4 Q. Okay. On page 29, you discuss the drug</p> <p>5 manual that Buzzeo helped the company write; is</p> <p>6 that right?</p> <p>7 A. I don't know exactly what Buzzeo's role</p> <p>8 was. Sometimes they helped the company, but the</p> <p>9 company dictates what the policies and procedures</p> <p>10 are. They just want somebody who's going to put</p> <p>11 it in an appropriate format.</p> <p>12 So I don't know what Ron's company was</p> <p>13 doing in this form, but -- so I just couldn't tell</p> <p>14 you exactly what -- if he helped them write it or</p> <p>15 he just formatted it and told them this is what</p> <p>16 you need. So I just --</p> <p>17 Q. Did you read any deposition he gave in</p> <p>18 relation to Albertsons?</p> <p>19 A. No, I did not.</p> <p>20 Q. Okay. Putting aside for this question</p> <p>21 how the manual was implemented --</p> <p>22 A. Uh-huh.</p>

<p style="text-align: right;">Page 114</p> <p>1 Q. -- as written, was it deficient, in your 2 mind?</p> <p>3 A. Was the system deficient?</p> <p>4 Q. Was the drug manual, as written, 5 deficient?</p> <p>6 A. I didn't -- I concentrated my efforts on 7 the program areas within the drug manual that I 8 was tasked with reviewing. I didn't go over the 9 security provisions. I didn't go over certain 10 things. If I'm not mistaken, that manual has a 11 ton of different areas that the distribution 12 center has to monitor and evaluate.</p> <p>13 I just concentrated my efforts on the 14 areas that were pertinent to my review.</p> <p>15 Q. So just to wrap that up, you're not 16 offering an opinion in this case that the manual, 17 as written, was deficient in some way?</p> <p>18 A. I didn't evaluate the whole manual. But 19 I did evaluate this section.</p> <p>20 Q. Okay.</p> <p>21 A. And as -- this section is not complying 22 with the 1301.74(b).</p>	<p style="text-align: right;">Page 116</p> <p>1 evaluate the justification for ordering over the 2 max quantity needed to be in writing?</p> <p>3 A. Yes.</p> <p>4 Q. Why?</p> <p>5 A. Well, to form a consistent program when 6 you're evaluating somebody that breaches the max 7 order quantity, there has to be some guidelines 8 set up. There's got to be some criteria. There's 9 got to be some direction from whoever's doing the 10 manual. If there's no criteria, no guidelines, 11 then how is the reviewer going to know when or 12 when not to approve? What is he looking at, or -- 13 he or she is looking at? Are they looking at just 14 general information? Are they actually going in 15 and looking at dispensing data? Why is this 16 pharmacy all of a sudden ordering way above the 17 MOQ?</p> <p>18 And that criteria has got to be written 19 somewhere. If not, there's no consistency in your 20 program. And if there's no consistency in your 21 program, the program is destined to fail.</p> <p>22 Q. So it's your opinion that a policy is</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. Okay. Turn to page 31 if you would.</p> <p>2 A. Sure.</p> <p>3 Q. And you have a heading that the MOQ was 4 easily circumvented.</p> <p>5 Do you see that?</p> <p>6 A. Which paragraph? The first paragraph?</p> <p>7 Q. The heading, The MOQ was easily 8 circumvented.</p> <p>9 A. Oh, okay. Middle of the page.</p> <p>10 Q. Are you there?</p> <p>11 A. Yeah, I got it.</p> <p>12 Q. Okay. And then in the second paragraph 13 below that heading that starts with "Also the 14 MOQ" -- do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Halfway down that paragraph you state, 17 The materials I reviewed did not establish any 18 criteria during SOM period 1 by which to evaluate 19 the justification for ordering over the maximum.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is it your opinion that the criteria to</p>	<p style="text-align: right;">Page 117</p> <p>1 deficient without such written criteria?</p> <p>2 A. Yes. There's no guidance.</p> <p>3 Q. Your last sentence says, Indeed, the 4 director of pharmacy professional services and 5 compliance could have accepted any justification 6 provided by a pharmacy simply to avoid reporting 7 suspicious orders.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Is there any proof that you saw that that 11 ever happened at Albertsons?</p> <p>12 A. Is there any proof?</p> <p>13 Q. That you saw in all the documents you 14 reviewed that that ever happened at Albertsons.</p> <p>15 A. Well, no, because there were no -- there 16 were no documents showing threshold increases or 17 MOQ increases that I could review. The basis for 18 due diligence investigation is previous breaches 19 of threshold. It's pretty well known.</p> <p>20 If there's no documents to review, I 21 can't tell whether there was a problem.</p> <p>22 Q. Right. But your last sentence is</p>

<p style="text-align: right;">Page 118</p> <p>1 basically saying that the director of pharmacy 2 could have accepted any justification as a pretext 3 to avoid reporting suspicious orders. 4 I'm asking you whether you saw any 5 evidence that that, indeed, and in fact happened. 6 A. Yeah, I guess so, because no suspicious 7 orders were ever reported. 8 Q. I don't understand the answer. 9 A. If -- 10 Q. You believe you saw evidence that the 11 director of pharmacy at Albertsons accepted a 12 justification as a pretext to avoid reporting 13 suspicious orders? 14 A. What I'm saying is there were never any 15 suspicious orders reported. And we know that 16 there were breaches in the MOQ. 17 So without documents showing what the MOQ 18 was, what the breach was, and how it was -- it was 19 basically evaluated, I don't know if that's the 20 case or not. But it could be the case. 21 Q. I understand the theoretical possibility. 22 I'm asking if you saw any proof that that actually</p>	<p style="text-align: right;">Page 120</p> <p>1 documents. 2 BY MR. GIBBONS: 3 Q. Okay. I have the same question if you go 4 over to page 32. The very top paragraph. The 5 last sentence of that top paragraph says, 6 Pharmacies could easily circumvent the MOQ 7 threshold system by manipulating the dosage 8 strength and bottle sizes it ordered, allowing a 9 continuous, unimpeded flow of opioids and other 10 controlled substances to be dispersed from the 11 pharmacy. 12 A. Yes. 13 Q. Did you see any proof that that actually 14 and in fact happened at Albertsons? 15 MR. MIGLIORI: Objection to form. 16 THE WITNESS: No, I did not, because, 17 again, there were no documents, in relation to 18 doing due diligence, on a pharmacy or how they 19 evaluated the MOQ and how they approved the MOQ. 20 BY MR. GIBBONS: 21 Q. Did you start your answer with "no" and 22 then give an explanation? I just want to make</p>
<p style="text-align: right;">Page 119</p> <p>1 and in fact happened. 2 A. I did not have a document that says, by 3 the way, this happened. 4 Q. It doesn't have to be a document. It 5 could have been a DEA investigative report. It 6 could have been a lawsuit filed. It could be a 7 lot of things. You've already -- 8 MR. MIGLIORI: Those are all documents -- 9 BY MR. GIBBONS: 10 Q. -- told us all these things you read in 11 relation to other pharmacies. 12 I'm asking you, in relation to 13 Albertsons, did you see any evidence of anything 14 you reviewed that that, in fact, happened? 15 MR. MIGLIORI: Objection. That was asked 16 and answered. 17 Those are all documents. 18 THE WITNESS: I did not see anything like 19 that saying -- that somebody said, oh, I didn't do 20 the evaluation and I'm going to -- just to prove 21 it so I don't have to report it as a suspicious 22 order. There's nothing like that in the</p>	<p style="text-align: right;">Page 121</p> <p>1 sure the record is clear on that. 2 A. Yes. 3 Q. That fussed [sic] it up even worse -- 4 MR. MIGLIORI: I was going to say -- 5 BY MR. GIBBONS: 6 Q. -- but that's okay. I think it reads 7 clear enough. 8 Let me ask you to turn to page 38. 9 A. Okay. 10 Q. Okay. On the bottom of page 38 -- and 11 you can read it for yourself -- it starts with the 12 paragraph, This is confirmed by an April 2013 13 e-mail from Lynette Berggren. 14 Do you see that? 15 A. Yes. 16 Q. Okay. So -- feel free to read that, but 17 it references KVK Tech and a SOM survey they were 18 conducting in April of 2013. 19 Is that right? 20 A. Yes. 21 Q. Okay. And you would agree with me that 22 this e-mail exchange happened before Albertsons</p>

<p style="text-align: right;">Page 122</p> <p>1 had restarted their -- distributing controlled 2 substances from Ponca to their stores, right? 3 A. Yes. A little bit before. 4 Q. Okay. And in fact, Albertsons had not 5 distributed controlled substances to their stores 6 for five years prior to this April 2013 e-mail 7 exchange; is that right? 8 A. That's correct. 9 Q. Now, you said "shortly before." Is that 10 important to you? 11 A. Where did I say "shortly before"? I'm 12 sorry. 13 Q. In your previous answer, you said the 14 e-mail exchange was shortly before Albertsons 15 started redistributing or distributing controlled 16 substances from Ponca to their stores. 17 A. Well, yeah, I think it's very important. 18 Q. Why? 19 A. Because if you don't have a SOMs system 20 in place that's goal to actually evaluate 21 appropriately and in compliance with the law, then 22 you shouldn't be distributing controlled</p>	<p style="text-align: right;">Page 124</p> <p>1 orders, identify orders that are of unusual size, 2 frequency, substantially deviating from a normal 3 pattern, and it has to be reported when found. 4 Q. That -- 5 A. So the system in place that they had when 6 they started did not do that. 7 Q. I understand that. We're not there yet. 8 I'm asking, does that system need to be 9 in place before the distribution center actually 10 starts distributing controlled substances? 11 MR. MIGLIORI: Objection. 12 Go ahead. 13 THE WITNESS: Okay. On the day they 14 distribute -- on the day they start distribution, 15 it should be in place. 16 BY MR. GIBBONS: 17 Q. I agree with that. I'm not asking about 18 when they start distributing. 19 I'm asking, if it's a month or three 20 months before, did they need to have a SOMs 21 program in place? 22 MR. MIGLIORI: Objection. That's not</p>
<p style="text-align: right;">Page 123</p> <p>1 substances until that system is in place. 2 Q. But this is before they started 3 redistributing controlled substances from Ponca to 4 their stores. They hadn't yet started doing it, 5 and yet you're highlighting something that 6 happened before they even were operational. 7 A. Well, if I'm not mistaken, they started 8 doing the -- shortly thereafter, but they had no 9 system -- they were going by a system that was not 10 an appropriate system. They started -- they 11 started their distribution activities with a 12 system that didn't do anything. That's why they 13 created the 20 percent plus. And that was done 14 after they had already started distributing. And 15 the 20 percent plus wasn't appropriate either. 16 Q. Okay. That's a different issue. 17 Are you aware of any requirement in the 18 regs or the law that a distribution center has to 19 have a documented SOMs program before it resumes 20 distribution of controlled substances? 21 A. No. It has to have a system in place to 22 maintain -- to identify and report suspicious</p>	<p style="text-align: right;">Page 125</p> <p>1 your prior question. 2 Go ahead. 3 THE WITNESS: It depends on when -- what 4 they presented to the DEA investigators that did 5 their pre-license inspection. So if they 6 presented a system prior to operation that wasn't 7 necessarily the system that was in compliance, 8 then that's a problem. 9 BY MR. GIBBONS: 10 Q. Do you have any evidence that Albertsons 11 presented a system to the DEA that was deficient? 12 A. I don't know because I don't know what 13 they presented to DEA. 14 Q. That's my point. You don't know one way 15 or the other, right? 16 A. Well, what I do know is that they were 17 using the carryover system from 2008, and that was 18 deficient. 19 Q. Did you read Lynette Berggren's testimony 20 in relation to this KV [sic] Tech survey? 21 A. Yes. 22 Q. Did you consider it?</p>

<p style="text-align: right;">Page 126</p> <p>1 A. Yes.</p> <p>2 Q. And what, if any, relevance did it have</p> <p>3 to your opinion?</p> <p>4 MR. MIGLIORI: Objection. Overly broad.</p> <p>5 Go ahead.</p> <p>6 THE WITNESS: They were on the cusp of</p> <p>7 distributing controlled substances from their</p> <p>8 facility, Ponca City. They didn't have a system</p> <p>9 in play, and that's why this is in there. Because</p> <p>10 even though this might have been focused on</p> <p>11 Murdoch, I think Berggren would have said, well,</p> <p>12 our system -- our system that we're operating is</p> <p>13 going to be fine. But she didn't say that.</p> <p>14 She said, I have -- if I have a choice of</p> <p>15 saying yes or no to whether the system is</p> <p>16 compliant with 1301.74, I guess I have to say no.</p> <p>17 Now, while she's talking about --</p> <p>18 potentially talking about Murdoch, the fact is is</p> <p>19 that this was a system that was in play in 2008,</p> <p>20 and it was a system that was carried over.</p> <p>21 So I don't believe Berggren was saying it</p> <p>22 because she believed that the system was</p>	<p style="text-align: right;">Page 128</p> <p>1 e-mail traffic -- she wrote exactly what I put on</p> <p>2 the document.</p> <p>3 Q. I understand that. You're taking words</p> <p>4 on an e-mail and you're extrapolating to support</p> <p>5 your opinion.</p> <p>6 I'm asking whether you considered her</p> <p>7 deposition testimony where she explained what she</p> <p>8 meant by that e-mail.</p> <p>9 A. I'm sure --</p> <p>10 MR. MIGLIORI: Objection to form.</p> <p>11 THE WITNESS: I'm sorry.</p> <p>12 I'm sure I did.</p> <p>13 BY MR. GIBBONS:</p> <p>14 Q. But you didn't footnote that or show how</p> <p>15 that influenced your opinion one way or the other.</p> <p>16 A. I don't -- if you want to review what her</p> <p>17 statement was, I'm sure we could do it now. I</p> <p>18 mean, I'm pretty confident what I wrote is</p> <p>19 consistent with what was in the document. She</p> <p>20 might --</p> <p>21 Q. But as you sit here --</p> <p>22 A. -- have said, I don't remember. Because</p>
<p style="text-align: right;">Page 127</p> <p>1 appropriate.</p> <p>2 BY MR. GIBBONS:</p> <p>3 Q. I asked you if you read Berggren's --</p> <p>4 A. Yes, I did.</p> <p>5 Q. -- deposition and if it had any influence</p> <p>6 on your opinion, and you're citing her e-mail --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- which you've got in your report.</p> <p>9 I'm asking you, did you read her</p> <p>10 explanation as to what her words meant in that</p> <p>11 e-mail.</p> <p>12 MR. MIGLIORI: Objection to form.</p> <p>13 Go ahead.</p> <p>14 THE WITNESS: I'm sure I read them.</p> <p>15 BY MR. GIBBONS:</p> <p>16 Q. You don't footnote it anywhere here.</p> <p>17 A. Well -- it's not footnoted?</p> <p>18 MR. MIGLIORI: Take your time.</p> <p>19 BY MR. GIBBONS:</p> <p>20 Q. Berggren's deposition testimony.</p> <p>21 A. No, this was -- because this was a</p> <p>22 document. It was a document where she wrote in</p>	<p style="text-align: right;">Page 129</p> <p>1 a lot of the deposition witnesses could not</p> <p>2 remember what they did or what they meant. But --</p> <p>3 and maybe that's why I did not include it.</p> <p>4 However, you know, I -- I'm pretty sure</p> <p>5 that was straightforward.</p> <p>6 Q. Did you ever read or talk with Jim</p> <p>7 Tsipakis, who you reference in this paragraph?</p> <p>8 A. I don't recall if Tsipakis was one of the</p> <p>9 documents I read -- I mean was one of the</p> <p>10 depositions I read. But I know I used one of his</p> <p>11 documents.</p> <p>12 Q. You're citing one e-mail with two</p> <p>13 sentences --</p> <p>14 A. Yeah.</p> <p>15 Q. -- right?</p> <p>16 A. And -- where is that? What page is that?</p> <p>17 Q. 38 and 39.</p> <p>18 A. Okay. Okay. I read it.</p> <p>19 Q. My question is, you're taking two</p> <p>20 sentences in an e-mail that Jim wrote, and you're</p> <p>21 concluding that this showed corporate disregard</p> <p>22 for the overall compliance by not cooperating with</p>

<p style="text-align: right;">Page 130</p> <p>1 a supplier that is simply trying to determine if 2 their customer is in compliance with the law. 3 Do you see that? 4 A. Yes. 5 Q. Besides that e-mail, did you read 6 anything else about testimony or e-mails that 7 Tsipakis gave in relation to this KVK survey? 8 A. No, because I think this was pretty 9 straightforward. It was his e-mail. He wrote it. 10 If the vendor refuses to ship, we can do a 11 risk-benefit analysis and work with legal in 12 response or move the business to a different 13 vendor. 14 That's pretty straightforward. 15 Q. Yeah. I -- I read your report. I read 16 that e-mail, those two sentences. 17 I'm asking, did you read anything else 18 before you gave that conclusion that I just read 19 in the top of page 39 -- 20 MR. MIGLIORI: Objection. 21 BY MR. GIBBONS: 22 Q. -- that it's showing corporate disregard</p>	<p style="text-align: right;">Page 132</p> <p>1 This begins unit number 3. We're on the record. 2 BY MR. GIBBONS: 3 Q. I'm going to ask you to turn to page 46 4 in your report, Exhibit 1. 5 A. Okay. 6 Q. And there's a heading there that's 7 halfway down the page, Review and analysis of 8 above threshold reports and call logs from 9 August 2013 to June 2016. 10 Do you see that? 11 A. Yes. 12 Q. And at the very bottom of that paragraph, 13 you state, With 0.6 percent of the controlled 14 substance-related orders in Texas investigated, 15 Albertsons clearly struggled to provide sufficient 16 resources to fulfill their due diligence 17 obligations, resulting in a total failure to 18 identify and stop the shipment of suspicious 19 orders to their pharmacies. 20 Do you see that? 21 A. Yes. 22 Q. Now, I understand your due diligence</p>
<p style="text-align: right;">Page 131</p> <p>1 for the overall compliance by not cooperating with 2 one supplier -- 3 MR. MIGLIORI: Objection. 4 BY MR. GIBBONS: 5 Q. -- on a survey -- 6 MR. MIGLIORI: Objection. 7 BY MR. GIBBONS: 8 Q. -- predating when Ponca began to resupply 9 controlled substances to their stores? 10 MR. MIGLIORI: Objection to form. 11 Compound. 12 Go ahead. 13 THE WITNESS: No, I stand by that 14 statement. 15 MR. GIBBONS: Okay. Why don't we take a 16 short five-minute break, and then I think I can 17 wrap up before lunch. 18 MR. KOHLER: Okay. 19 VIDEO TECHNICIAN: The time is 11:34 a.m. 20 This ends unit 2. We're off the record. 21 (A recess was taken.) 22 VIDEO TECHNICIAN: The time is 11:43 a.m.</p>	<p style="text-align: right;">Page 133</p> <p>1 opinions that are detailed in your report. 2 My question is, can you identify one 3 shipment that was ordered for an improper purpose? 4 MR. MIGLIORI: Objection. 5 THE WITNESS: I could identify pharmacies 6 that were showing reasons for their increase, but 7 there was nothing in comments in the vast majority 8 of those orders. 9 So no, I can't tell you that, but I can 10 tell you that there were pharmacy examples or 11 pharmacy call logs that basically said things that 12 should have immediately -- immediately -- caused 13 whoever their user was to stop and say something 14 is wrong here; we need to do an investigation. 15 BY MR. GIBBONS: 16 Q. And I understand that's your opinion in 17 relation to the due diligence obligations. And I 18 read all that. But my question was a very, very 19 narrow one. 20 Can you identify one shipment that was 21 ordered for an improper purpose? 22 MR. MIGLIORI: Objection. Form.</p>

<p style="text-align: right;">Page 134</p> <p>1 THE WITNESS: No, I cannot identify one 2 shipment. 3 BY MR. GIBBONS: 4 Q. My same question relates to -- can you 5 identify any shipment that was ordered for an 6 illegal purpose? 7 A. Again, without the comments, I have no 8 idea. I mean, I just -- I can't identify 9 something if the information is not there. 10 Q. Okay. I want to ask you a hypothetical 11 set of questions here. Okay? 12 A. Okay. 13 Q. I want you to assume that not one 14 controlled substance was ever improperly dispensed 15 from any Albertsons pharmacy. Okay? Do you 16 understand that? 17 A. Uh-huh. 18 Q. Yes? 19 A. Yes. 20 Q. So not one pill was improperly dispensed 21 from the pharmacy. 22 Are you with me?</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Can you answer it? 2 MR. MIGLIORI: Objection. It's an 3 incomplete hypothetical. 4 Answer it if you can. 5 THE WITNESS: See, I don't know if I can 6 answer that -- 7 BY MR. GIBBONS: 8 Q. Why not? 9 A. Because first of all, it's a 10 hypothetical. Second of all, in the report 11 there's very specific instances of -- of 12 pharmacies that -- where the comments showed there 13 was a problem. 14 So I -- I mean, I know what you're 15 saying. You're saying, well, if they never, ever 16 dispensed out anything illegal. But that's not 17 what this shows. That's not -- what it shows is a 18 pattern of comments that should have triggered a 19 massive response from somebody, and that's not 20 what occurred here. 21 You're asking me, well, if no one ever -- 22 if they never distributed something illegal or</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Yes. 2 Q. Okay. Under that hypothetical, no 3 shipment of a suspicious order from Albertsons' 4 warehouse to its pharmacies could have contributed 5 to an opioid epidemic; isn't that right? 6 MR. MIGLIORI: Objection to form and 7 foundation and incomplete. 8 Go ahead. 9 THE WITNESS: I just -- because it's a 10 hypothetical, I -- I don't know how I'd answer 11 that. I don't deal in hypotheticals. I deal in 12 facts. And that's not what I -- I don't know how 13 I could answer that. 14 BY MR. GIBBONS: 15 Q. Well, as an expert witness -- 16 A. Yeah. 17 Q. -- I am allowed to ask you hypothetical 18 questions, and I'm asking you a hypothetical 19 question, and I'm asking for your answer based on 20 that hypothetical question. That's why I said 21 repeatedly it's a hypothetical. 22 A. Okay.</p>	<p style="text-align: right;">Page 137</p> <p>1 inappropriately, could they not -- I don't know. 2 I can't answer that because I don't know -- I 3 mean, I just can't answer that. That's -- 4 Q. Okay. I'm trying to alleviate your 5 problem with the hypothetical -- 6 A. Okay. 7 Q. -- and going back to reality where I've 8 read your opinions based on the reports and based 9 on the data and the documents you reviewed. 10 I'm not asking about any of that. I'm 11 asking you a hypothetical, which started as the 12 premise being that not one controlled substance 13 was ever improperly dispensed from an Albertsons 14 pharmacy. 15 So then my question then becomes, how 16 could a shipment have contributed to the opioid 17 epidemic based on that hypothetical foundation? 18 MR. MIGLIORI: Objection to form. It's 19 compound and it's incomplete. 20 Go ahead. 21 THE WITNESS: I don't know. I'm just not 22 comfortable asking that question --</p>

<p style="text-align: right;">Page 138</p> <p>1 BY MR. GIBBONS:</p> <p>2 Q. Why not?</p> <p>3 A. -- answering that question.</p> <p>4 Q. Why not?</p> <p>5 A. Because, I mean, it's not what I</p> <p>6 observed. And I know it's hypothetical, but I</p> <p>7 didn't observe that. And if -- because I didn't</p> <p>8 observe it, my answer would -- I just don't think</p> <p>9 my answer would be appropriate because that's not</p> <p>10 what I observed. And so --</p> <p>11 Q. Your answer is highly appropriate as an</p> <p>12 expert in relation to hypotheticals that counsel</p> <p>13 poses.</p> <p>14 So I'm asking you, is there any reason</p> <p>15 you can't answer that hypothetical, like you don't</p> <p>16 understand it? Saying you don't want to answer it</p> <p>17 doesn't seem to be the right option here.</p> <p>18 A. So let me get this straight. The</p> <p>19 question is, if there never was a drug controlled</p> <p>20 substance dispensed illegally --</p> <p>21 Q. Or improperly.</p> <p>22 A. Well, could you define "improperly"?</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Well, I think it's important that we</p> <p>2 define the terms --</p> <p>3 Q. Okay.</p> <p>4 A. -- so I can make the answer --</p> <p>5 Q. In the world of dispensing --</p> <p>6 A. Yes.</p> <p>7 Q. -- what does the word "improperly" mean</p> <p>8 to you?</p> <p>9 A. Well -- in a corresponding responsibility</p> <p>10 sense?</p> <p>11 Q. Just define it for us.</p> <p>12 A. Okay.</p> <p>13 MR. MIGLIORI: Objection. Overly broad.</p> <p>14 Improper hypothetical.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: If it's based on</p> <p>17 corresponding responsibility, the pharmacist has</p> <p>18 not done the appropriate due diligence, evaluating</p> <p>19 red flags to determine a resolution of the red</p> <p>20 flags and then dispensing medication or not</p> <p>21 dispensing the medication.</p> <p>22 So that's -- that becomes -- it crosses</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. You define it.</p> <p>2 A. Well, it's not my question. It's your</p> <p>3 question.</p> <p>4 Q. I'm going to ask you to define the word</p> <p>5 "improperly."</p> <p>6 MR. MIGLIORI: Objection. Overly broad.</p> <p>7 Vague. Form.</p> <p>8 THE WITNESS: Again, what is -- what do</p> <p>9 you mean by improperly? What --</p> <p>10 BY MR. GIBBONS:</p> <p>11 Q. Something that violates --</p> <p>12 A. I know what "improperly" --</p> <p>13 Q. -- the law.</p> <p>14 A. -- means.</p> <p>15 Q. Something that violates the regs.</p> <p>16 A. That's not --</p> <p>17 MR. MIGLIORI: Stop.</p> <p>18 Objection. Completely vague. Objection</p> <p>19 to form.</p> <p>20 BY MR. GIBBONS:</p> <p>21 Q. We can spend a while defining these terms</p> <p>22 if you want to do that.</p>	<p style="text-align: right;">Page 141</p> <p>1 the line. If they're knowingly doing it, it's</p> <p>2 definitely illegal. If they're not knowingly</p> <p>3 doing it, they're administratively -- they're</p> <p>4 making a mistake.</p> <p>5 But there's other types of dispensing.</p> <p>6 If a pharmacist is selling prescriptions, well,</p> <p>7 that's totally illegal. It has nothing to do with</p> <p>8 corresponding responsibility. He's selling</p> <p>9 prescriptions. If he's dispensing out the back</p> <p>10 door or he's stealing medication --</p> <p>11 BY MR. GIBBONS:</p> <p>12 Q. That's illegal --</p> <p>13 A. -- that's totally illegal.</p> <p>14 So I need to know, when you say</p> <p>15 "improper," are you just talking about</p> <p>16 corresponding responsibility, or are you talking</p> <p>17 about all aspects of the --</p> <p>18 Q. In my hypothetical, I'm talking about all</p> <p>19 aspects of improper or illegal dispensing, and I'm</p> <p>20 asking you to assume that no improper, as broadly</p> <p>21 defined as you can think it, or illegal dispensing</p> <p>22 ever happened at an Albertsons pharmacy.</p>

<p style="text-align: right;">Page 142</p> <p>1 That's my predicate to the question.</p> <p>2 Are you still struggling with the</p> <p>3 predicate?</p> <p>4 MR. MIGLIORI: Objection to form. Vague.</p> <p>5 Improper hypothetical.</p> <p>6 THE WITNESS: What I'm struggling with is</p> <p>7 the fact that I have to go through now and think</p> <p>8 about everything that could happen with those</p> <p>9 drugs, and it's going to -- it will take a while</p> <p>10 to go through this, quote/unquote, hypothetical</p> <p>11 because there are many factors.</p> <p>12 So if you want, just give me a second,</p> <p>13 let me go through all the ways that drugs could be</p> <p>14 diverted. And --</p> <p>15 BY MR. GIBBONS:</p> <p>16 Q. But I'm asking you to assume that none of</p> <p>17 that happened. Anything you could possibly think</p> <p>18 of in relation to improper diversion, illegal</p> <p>19 diversion, I'm asking you to assume it never</p> <p>20 happened --</p> <p>21 MR. MIGLIORI: Objection.</p> <p>22</p>	<p style="text-align: right;">Page 144</p> <p>1 A. -- I just don't know.</p> <p>2 Q. Now I'll -- I'll flip the coin on you.</p> <p>3 A. Uh-huh.</p> <p>4 Q. I want you to assume as this predicate,</p> <p>5 that every script was dispensed legally and</p> <p>6 properly, and in compliance with all laws and</p> <p>7 regulations from every Albertsons pharmacy.</p> <p>8 A. Uh-huh.</p> <p>9 Q. Okay? Under that hypothetical, no</p> <p>10 shipment of a suspicious order from Albertsons'</p> <p>11 warehouse to its pharmacies could have contributed</p> <p>12 to the opioid epidemic; isn't that true?</p> <p>13 MR. MIGLIORI: Improper hypothetical.</p> <p>14 Overly broad. Vague.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: Are they conducting the due</p> <p>17 diligence on the orders that are going into the</p> <p>18 pharmacy?</p> <p>19 BY MR. GIBBONS:</p> <p>20 Q. Absolutely, because every script was</p> <p>21 dispensed legally and properly and in compliance</p> <p>22 with all laws and regulations.</p>
<p style="text-align: right;">Page 143</p> <p>1 BY MR. GIBBONS:</p> <p>2 Q. -- at an Albertsons pharmacy.</p> <p>3 MR. MIGLIORI: Objection. Now you've</p> <p>4 changed the question. You went from dispensing to</p> <p>5 diversion.</p> <p>6 MR. GIBBONS: No -- okay.</p> <p>7 BY MR. GIBBONS:</p> <p>8 Q. Dispensing.</p> <p>9 MR. MIGLIORI: Objection. Vague. I</p> <p>10 don't even know where this hypothetical is now.</p> <p>11 It's an improper hypothetical.</p> <p>12 Answer it if you can.</p> <p>13 THE WITNESS: I just -- I just don't know</p> <p>14 if I can answer that question. I mean, I just</p> <p>15 don't know.</p> <p>16 BY MR. GIBBONS:</p> <p>17 Q. So if you were asked this question in a</p> <p>18 courtroom, your statement to the jury is I just</p> <p>19 don't know that I can answer that question? I</p> <p>20 just want to make sure we're on the same page.</p> <p>21 A. Yeah, that would be my answer --</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 145</p> <p>1 MR. MIGLIORI: Objection. That's not</p> <p>2 even a hypothetical now.</p> <p>3 BY MR. GIBBONS:</p> <p>4 Q. That is the predicate to the question,</p> <p>5 and I was trying to clear up your hesitation.</p> <p>6 MR. MIGLIORI: Objection. Improper.</p> <p>7 Vague. Compound.</p> <p>8 Go ahead if you can.</p> <p>9 THE WITNESS: I just -- if the pharmacy</p> <p>10 has never dispensed a bad prescription, what</p> <p>11 you're asking is, therefore, the distribution</p> <p>12 can't be related to diversion within the --</p> <p>13 BY MR. GIBBONS:</p> <p>14 Q. Contributing to the opioid epidemic.</p> <p>15 MR. MIGLIORI: Objection. Same</p> <p>16 objections.</p> <p>17 THE WITNESS: I don't know because the</p> <p>18 opioid epidemic is just not based -- I mean, it's</p> <p>19 largely based on the prescriptions going out, but</p> <p>20 it also has things to do with the amount of</p> <p>21 purchases that are made and potentially diverted</p> <p>22 through illegal means.</p>

<p style="text-align: right;">Page 146</p> <p>1 So if you fill every prescription correct</p> <p>2 but you're pocketing 500 hydrocodone tablets a day</p> <p>3 or a week and or you're selling them out the back</p> <p>4 door --</p> <p>5 BY MR. GIBBONS:</p> <p>6 Q. No one is asking about that. That --</p> <p>7 A. Well, you are.</p> <p>8 Q. -- has nothing to do with my</p> <p>9 hypothetical.</p> <p>10 A. But you are.</p> <p>11 Q. I asked about scripts that were dispensed</p> <p>12 legally and properly in compliance with all laws</p> <p>13 and regs. I never said anything about somebody</p> <p>14 stealing hydrocodone and selling it out the back</p> <p>15 door.</p> <p>16 MR. MIGLIORI: Well, wait a minute --</p> <p>17 THE WITNESS: Hold on a second.</p> <p>18 MR. MIGLIORI: -- you said any possible</p> <p>19 improper -- you said the broadest possible</p> <p>20 definition. Now you're saying it's limited.</p> <p>21 MR. GIBBONS: That was five minutes ago.</p> <p>22 We have moved on to the other side of the coin.</p>	<p style="text-align: right;">Page 148</p> <p>1 you had a pharmacist that was stealing and selling</p> <p>2 out the back door.</p> <p>3 I'm asking you to assume that that didn't</p> <p>4 happen either. No pharmacist was stealing and</p> <p>5 selling out the back door and all other scripts</p> <p>6 were dispensed legally and properly, in compliance</p> <p>7 with all laws and regs.</p> <p>8 So then my question remains, no shipment</p> <p>9 of a suspicious order from Albertsons' warehouse</p> <p>10 to its pharmacies could then have contributed to</p> <p>11 the opioid epidemic; isn't that true?</p> <p>12 MR. MIGLIORI: Objection. Improper</p> <p>13 hypothetical. Now incredibly vague and compound.</p> <p>14 And objection to form.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: Well, what about</p> <p>17 third-party vendors?</p> <p>18 BY MR. GIBBONS:</p> <p>19 Q. What about third-party vendors is</p> <p>20 confusing you in my hypothetical?</p> <p>21 A. Because if that pharmacy is ordering from</p> <p>22 third-party vendors and those drugs are being</p>
<p style="text-align: right;">Page 147</p> <p>1 MR. MIGLIORI: No, no, we haven't. The</p> <p>2 hypothetical is completely vague and compound, and</p> <p>3 you're comparing dispensing with diversion</p> <p>4 control. It's apples and oranges.</p> <p>5 THE WITNESS: See, that's my problem with</p> <p>6 hypotheticals. You could be a great pharmacist</p> <p>7 during the day, doing your corresponding</p> <p>8 responsibility, but then you start diverting</p> <p>9 illegally.</p> <p>10 So if you don't have a -- if you don't</p> <p>11 have a SOM in place that's going to pick up</p> <p>12 anomalies within ordering patterns like that,</p> <p>13 yeah, you could have the greatest pharmacy</p> <p>14 dispensing in the world, but if you're losing</p> <p>15 drugs through non-dispensing means, then you are</p> <p>16 contributing.</p> <p>17 BY MR. GIBBONS:</p> <p>18 Q. Okay.</p> <p>19 A. So I'm having a --</p> <p>20 Q. I'll give you that. Losing drugs through</p> <p>21 non-dispensing means can happen. We all agree</p> <p>22 with that. That could help cause an epidemic, if</p>	<p style="text-align: right;">Page 149</p> <p>1 diverted -- I know, I just --</p> <p>2 Q. I already took diversion -- illegal,</p> <p>3 criminal diversion out of the hypothetical. It</p> <p>4 doesn't matter how they get them.</p> <p>5 In my hypothetical, the pharmacy is not</p> <p>6 doing that.</p> <p>7 Is there a reason you don't want to</p> <p>8 answer the question?</p> <p>9 MR. MIGLIORI: Objection. It's because</p> <p>10 it's unanswerable. Just by saying it louder</p> <p>11 doesn't make it a better question.</p> <p>12 It's -- objection. Vague. Compound.</p> <p>13 Improper hypothetical.</p> <p>14 THE WITNESS: And the other reason is, I</p> <p>15 didn't come here to answer hypotheticals. I came</p> <p>16 here to report on my findings relating to a</p> <p>17 particular group of documents and depositions and</p> <p>18 what I found.</p> <p>19 You're asking me hypotheticals that I'm</p> <p>20 not prepared to answer because it's a</p> <p>21 hypothetical. If you ask me about my report, you</p> <p>22 ask me any portion of my report, I'll explain what</p>

<p style="text-align: right;">Page 150</p> <p>1 I meant, and I have no problems doing that.</p> <p>2 But you're now asking me a hypothetical</p> <p>3 that I just can't answer because I don't know.</p> <p>4 And no matter what answer I give, it's -- it's not</p> <p>5 going to be because -- it's not going to be</p> <p>6 correct because it's a hypothetical. And that's</p> <p>7 why I'm not answering this question.</p> <p>8 I just don't have the, you know, ability</p> <p>9 to answer this question based on the facts that</p> <p>10 you're giving me.</p> <p>11 BY MR. GIBBONS:</p> <p>12 Q. Okay. So if I asked you this question in</p> <p>13 front of a jury during a trial, you're going to</p> <p>14 tell the jury you can't answer hypothetical</p> <p>15 questions because of all these things you can't</p> <p>16 think of right now; you're only here to answer</p> <p>17 about things in your report?</p> <p>18 MR. MIGLIORI: No, that's not what he</p> <p>19 said. And to be clear, he said based on the facts</p> <p>20 that you gave me. If he's given a proper</p> <p>21 hypothetical, he knows that he has a role to play</p> <p>22 in answering the questions being asked that gets</p>	<p style="text-align: right;">Page 152</p> <p>1 But --</p> <p>2 A. Okay.</p> <p>3 Q. -- we're just going to keep spinning</p> <p>4 wheels here because you won't answer the question.</p> <p>5 MR. MIGLIORI: Well --</p> <p>6 MR. GIBBONS: So we'll just certify it.</p> <p>7 We'll decide, if we go before a court on this</p> <p>8 question, because I would like an answer to that</p> <p>9 hypothetical, but I'm not going to get it today.</p> <p>10 MR. MIGLIORI: Okay. We can submit this</p> <p>11 transcript to the judge to show --</p> <p>12 MR. GIBBONS: Well, that's why we have a</p> <p>13 transcript.</p> <p>14 MR. MIGLIORI: -- that it's as clear as</p> <p>15 mud.</p> <p>16 BY MR. GIBBONS:</p> <p>17 Q. Okay. Let's turn over to page 51. And</p> <p>18 in the very top paragraph, four sentences down,</p> <p>19 you are discussing Albertsons' bonus plan.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you want to read that to</p>
<p style="text-align: right;">Page 151</p> <p>1 through a judge, which --</p> <p>2 MR. GIBBONS: That's not very clear to</p> <p>3 me.</p> <p>4 MR. MIGLIORI: -- in my opinion, this</p> <p>5 question would not get clear to a judge.</p> <p>6 MR. GIBBONS: That's not very clear to</p> <p>7 me.</p> <p>8 MR. MIGLIORI: Well, read the last</p> <p>9 answer.</p> <p>10 BY MR. GIBBONS:</p> <p>11 Q. You believe that you can answer a</p> <p>12 properly detailed hypothetical?</p> <p>13 A. Yeah. I believe I could. However, I</p> <p>14 just don't think that -- that's a pretty broad</p> <p>15 hypothetical. And I don't -- you know --</p> <p>16 Q. Okay. The record is going to speak for</p> <p>17 itself.</p> <p>18 A. Okay.</p> <p>19 Q. And if we have to take it to a judge, I'm</p> <p>20 pretty comfortable that I've eliminated about</p> <p>21 every question you could have about scripts that</p> <p>22 are correctly filled by Albertsons' pharmacists.</p>	<p style="text-align: right;">Page 153</p> <p>1 yourself for a second?</p> <p>2 A. I'm familiar with the section.</p> <p>3 Q. Okay. Prescription volume per week put</p> <p>4 the pharmacy into a certain category; is that</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. [REDACTED]; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And that prescription volume was for all</p> <p>10 prescriptions, not just controlled substances,</p> <p>11 right?</p> <p>12 A. I'm assuming yes. I would hope yes,</p> <p>13 because that's a heck of a lot controlled</p> <p>14 substance prescriptions.</p> <p>15 Q. Did you read the bonus plan?</p> <p>16 A. Yes.</p> <p>17 Q. Was it the volume for all</p> <p>18 prescriptions --</p> <p>19 A. It appeared --</p> <p>20 Q. -- and not just controlled substances?</p> <p>21 A. It appeared to be the volume of all</p> <p>22 prescriptions, yes.</p>

<p style="text-align: right;">Page 154</p> <p>1 Q. Do you know what the percentage 2 controlled substances are of Albertsons' overall 3 prescription volume per week? 4 A. No, I do not. 5 Q. Did you explore that at all? 6 A. No. 7 Q. I'm assuming you didn't look at that by 8 store, right? 9 A. No. That wasn't in any of the documents. 10 Q. And did you see how much bonus money was 11 actually paid to the pharmacy employees? 12 A. I believe there were some documents 13 showing [REDACTED]. 14 Q. Okay. And did you understand that, as 15 part of the bonus plan at Albertsons, there were 16 caps put on the bonuses? 17 A. Caps based on the prescription volume. 18 Q. Caps put on the total amount of bonus 19 money that an employee could receive under the 20 bonus program. 21 A. I don't remember that. 22 Q. Would that be important to your analysis?</p>	<p style="text-align: right;">Page 156</p> <p>1 controlled substances into the equation, that 2 changes the whole flavor of the bonus program. 3 Q. Okay. Let me ask it slightly different, 4 then. 5 Is it your opinion that providing any 6 financial incentive such as, like, a bonus we see 7 here at Albertsons, tied to prescription volume 8 that would incorporate controlled substance 9 volume, would undermine corresponding 10 responsibility? 11 A. If controlled substances are within the 12 equation, yes, I believe it would. 13 Q. And what is your basis for that opinion? 14 A. Holiday CVS. 15 Q. That it could lead to a pharmacist to 16 ignore their corresponding responsibility? 17 MR. MIGLIORI: Objection to form. 18 Go ahead. 19 THE WITNESS: If you look at the two 20 stores in Holiday CVS, 5195 and 219, both of those 21 stores were -- managers had a high volume of 22 controlled substance scripts and they were both</p>
<p style="text-align: right;">Page 155</p> <p>1 A. No, because you're still basing the 2 pharmacy -- basing on the pharmacy output, and so 3 no. 4 Q. Is it your position and opinion that 5 providing any financial incentive such as a bonus 6 tied to prescription volume would undermine 7 corresponding responsibility? 8 A. If it's tied to controlled substance 9 prescription volume? Yes, I do. 10 Q. But it's not tied to controlled substance 11 volume here. 12 A. Actually, it is. 13 Q. In part, right? 14 A. If a pharmacy -- if a pharmacy has 15 prescription levels and you have a pharmacist 16 who's not conducting corresponding responsibility 17 appropriately, those prescription numbers are 18 going to go up because he's not denying scripts. 19 He's allowing scripts. 20 So therefore, yes, you can't do that. I 21 mean, if you want to do it for, you know, legend 22 drugs, that's fine. But as soon as you add</p>	<p style="text-align: right;">Page 157</p> <p>1 receiving significant -- very significant bonuses. 2 So yes. 3 And that's just the one that pops into my 4 head. I'm sure I could find others, but -- 5 BY MR. GIBBONS: 6 Q. Did you -- 7 A. -- in fact -- 8 Q. I'm sorry. 9 A. -- in the Walgreens case, if I'm not 10 mistaken, Walgreens removed the bonus program 11 related to controlled substances. 12 So yeah, I mean, there's a whole litany 13 of cases where controlled substance bonuses had a 14 play in what they were doing. And once that was 15 removed, it kind of -- it kind of helped the 16 pharmacist make a decision. 17 Q. Did you see any proof that that ever 18 happened with any Albertsons employee? 19 A. I'm not aware of, based on the documents, 20 that that ever happened at Albertsons. 21 Q. Are you aware of whether Albertsons was 22 ever cited for such behavior? You cited cases</p>

<p style="text-align: right;">Page 158</p> <p>1 like CVS and Walmart, but --</p> <p>2 A. Walgreens.</p> <p>3 Q. Walgreens.</p> <p>4 A. Could you repeat the question?</p> <p>5 Q. Yeah. Was Albertsons ever cited for such</p> <p>6 tactics?</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. Okay. In the last sentence of that same</p> <p>9 paragraph on 51 -- are you with me?</p> <p>10 A. Yes.</p> <p>11 Q. -- you state, Any system that provides</p> <p>12 personal financial incentives to fill</p> <p>13 prescriptions (to include controlled substance</p> <p>14 prescriptions) undermines corresponding</p> <p>15 responsibility analysis and could lead to</p> <p>16 diversion.</p> <p>17 Do you see that?</p> <p>18 A. You said page 51?</p> <p>19 Q. Yep. Second-to-last sentence under that</p> <p>20 bonus paragraph. Do you see where that starts,</p> <p>21 Covaci testified?</p> <p>22 A. Yeah.</p>	<p style="text-align: right;">Page 160</p> <p>1 manager, said, look, you make the decision, but</p> <p>2 all I care about: Is it a good customer and is it</p> <p>3 profitable?</p> <p>4 I think that's pretty straightforward.</p> <p>5 Q. And so you took that example as proof</p> <p>6 that Albertsons' bonus setup led to diversion?</p> <p>7 A. The bonus process is tied into</p> <p>8 profitability. Now, I didn't say those words.</p> <p>9 Your district manager said those words.</p> <p>10 Q. Yeah, I understand that. But I'm asking</p> <p>11 for your basis for saying that Albertsons' bonus</p> <p>12 system could lead to diversion.</p> <p>13 A. Yeah.</p> <p>14 Q. And I'm asking you, is there any proof</p> <p>15 that it did.</p> <p>16 A. Do I have any proof? No, I don't have</p> <p>17 any proof. I just know historically what I've</p> <p>18 seen.</p> <p>19 Q. Okay.</p> <p>20 A. So...</p> <p>21 Q. Let's turn over to page 52. You have a</p> <p>22 heading that says 2014 SOP changes:</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Okay. Go to the very bottom of that</p> <p>2 paragraph.</p> <p>3 A. Yes.</p> <p>4 Q. Where -- you say could lead to diversion,</p> <p>5 right?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Do you have any -- did you see any proof</p> <p>8 that it actually led to diversion at Albertsons?</p> <p>9 A. There was a couple of instances where a</p> <p>10 store manager was talking about whether he would</p> <p>11 approve a -- a drug transaction or not. The</p> <p>12 pharmacist was -- the pharmacist was concerned</p> <p>13 about the patient. The patient was demanding that</p> <p>14 a certain type of drug manufacturer was dispensed.</p> <p>15 They know that is a red flag. They identified it</p> <p>16 as a red flag.</p> <p>17 Then the patient also lied and said that</p> <p>18 you dispensed this before, which -- they said no,</p> <p>19 we could have never dispensed that; we don't carry</p> <p>20 that generic.</p> <p>21 And the supervisor, the pharmacy</p> <p>22 supervisor, which I guess would be their district</p>	<p style="text-align: right;">Page 161</p> <p>1 Verified-accredited wholesale distributors.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Verified-accredited wholesale</p> <p>5 distributors is also known as VAWD?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And the National Association of</p> <p>8 the Boards of Pharmacies [sic] administers the</p> <p>9 VAWD program?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And at times they do that in</p> <p>12 conjunction with states?</p> <p>13 A. Well, some states require VAWD before you</p> <p>14 could do work. I think Indiana is one of them.</p> <p>15 They require a VAWD certification before you can</p> <p>16 dispense or distribute into their states. Yes.</p> <p>17 Q. And in accrediting a distributor and</p> <p>18 their distribution activities, the NABP looks at a</p> <p>19 company's policies and procedures to ensure they</p> <p>20 comply with the Controlled Substance Act; isn't</p> <p>21 that true?</p> <p>22 A. That is correct.</p>

<p style="text-align: right;">Page 162</p> <p>1 Q. So would it be fair to say that, at least 2 from a policies and procedures standpoint, if the 3 NABP awarded Albertsons VAWD accreditation, it 4 concluded Albertsons' distributor policies and 5 procedures were compliant with the CSA? 6 A. Well, they would -- they would approve it 7 based on what the company has given them. And in 8 this case, in the case of Albertsons, the -- it 9 appears, based on the documents that I reviewed, 10 that the initial VAWD application was turned back 11 because the SOM policy was not correct. So they 12 changed the SOM policy and resubmitted it. 13 Q. Okay. That wasn't my question. 14 A. Well -- 15 Q. You were just giving some background 16 before the VAWD was accredited to Albertsons. 17 I'm asking you that, from a policies and 18 procedures standpoint, if and when the NABP gave 19 Albertsons VAWD accreditation, it concluded that 20 Albertsons' policies and procedures were compliant 21 with the Controlled Substances Act; isn't that 22 true?</p>	<p style="text-align: right;">Page 164</p> <p>1 A. I'm aware of -- 2 Q. It's a yes or no. 3 MR. MIGLIORI: He didn't finish his 4 answer. 5 THE WITNESS: But -- I can tell you that 6 this statement that was made to VAWD and the 7 National Association was written in such a way 8 that it would not capture actually what they were 9 doing. Because the first line says, Suspicious 10 orders include orders of unusual size, orders 11 deviating substantially from a normal pattern, 12 orders of unusual frequency. 13 But the system you were using didn't do 14 unusual frequency, nor did it do substantial 15 deviation. 16 So the way it's written, it looks like, 17 oh, we met all the VAWD criteria. But if the 18 National Association of Boards of Pharmacy went 19 out and actually inspected and did an inspection 20 where they actually had a monitor, the SOM, they 21 would find that they weren't doing frequency or 22 substantial deviation.</p>
<p style="text-align: right;">Page 163</p> <p>1 MR. MIGLIORI: Objection. Asked and 2 answered. 3 THE WITNESS: The document that was 4 submitted to the National Association of Boards of 5 Pharmacy is the only thing they could go on. So 6 whatever is in that document, they would approve. 7 Now, obviously, they didn't approve the first one, 8 but they did approve the second one. 9 So the question is, is that what they 10 were actually doing. And -- 11 BY MR. GIBBONS: 12 Q. You're aware that the NABP accredited 13 Albertsons under VAWD, right? 14 A. I'm aware of that. And -- 15 Q. And so my question to you is when -- 16 MR. MIGLIORI: Objection -- wait, wait. 17 He didn't finish his answer. 18 MR. GIBBONS: Oh. 19 MR. MIGLIORI: You interrupted him. 20 THE WITNESS: I'm aware -- 21 BY MR. GIBBONS: 22 Q. I just asked if you were aware.</p>	<p style="text-align: right;">Page 165</p> <p>1 So what's on paper might look great, but 2 in reality, didn't cover compliant -- it wasn't a 3 compliant SOM with 1301.74(b). That's why I'm 4 saying that. 5 BY MR. GIBBONS: 6 Q. I'm not asking about practice. I'm 7 asking about a policy --written policies and 8 procedures. 9 And my question is, at least from a 10 written policies and procedures standpoint, if and 11 when the NABP gave VAWD accreditation to 12 Albertsons, it concluded that Albertsons' written 13 policies and procedures were compliant with the 14 Controlled Substances Act; isn't that true? 15 A. Okay. Their written -- I'll go along 16 with their written policies and procedures. Yes. 17 Q. Let me ask you to turn over to page 66. 18 And you've got a heading that says, "Conclusion." 19 Do you see that? 20 A. Yes. 21 Q. And thereafter you've got several pages 22 of paragraphs. Do you see that?</p>

<p style="text-align: right;">Page 166</p> <p>1 A. Uh-huh.</p> <p>2 Q. Before the next heading.</p> <p>3 A. Yes.</p> <p>4 Q. What was your purpose in having the</p> <p>5 section entitled, "Conclusion" here?</p> <p>6 A. Well, I wanted to basically create my</p> <p>7 findings in one closing paragraph so if people</p> <p>8 just wanted to -- to just get to the end and see</p> <p>9 why I had certain opinions, it pretty much</p> <p>10 encompassed what I was looking for.</p> <p>11 Q. So this was a closing paragraph summing</p> <p>12 up your previous 65 pages?</p> <p>13 A. It was a closing paragraph summarizing</p> <p>14 that particular section or that particular period,</p> <p>15 if I'm not mistaken.</p> <p>16 Q. Okay. If I asked you to turn to page 67,</p> <p>17 starting with the second full paragraph down that</p> <p>18 starts with "Finally, ACI's due diligence efforts</p> <p>19 failed to" -- do you see that paragraph?</p> <p>20 A. Yes.</p> <p>21 Q. All right. These paragraphs, starting</p> <p>22 with that one and going on to page 68, are talking</p>	<p style="text-align: right;">Page 168</p> <p>1 when they were making those calls, when Hooper and</p> <p>2 the rest of them were making those calls, all they</p> <p>3 were doing was verifying that those pharmacies</p> <p>4 wanted what they ordered.</p> <p>5 So there was no corresponding</p> <p>6 responsibility investigation because everything</p> <p>7 was approved. In fact, Beck said that: We</p> <p>8 approved everything. We approved it. If it was</p> <p>9 what the pharmacist wanted, they got approved.</p> <p>10 Q. I --</p> <p>11 A. That's why it was in there. Because</p> <p>12 corresponding responsibility starts when you get</p> <p>13 anomalies in ordering patterns. And that's what</p> <p>14 the 20 percent over average was. It was supposed</p> <p>15 to detect anomalies in ordering patterns.</p> <p>16 So because of that, somebody should have</p> <p>17 conducted an investigation rather than just doing</p> <p>18 a -- just doing a call and saying, yeah, it's</p> <p>19 fine --</p> <p>20 Q. Okay. In that paragraph you write -- are</p> <p>21 you with me still in that --</p> <p>22 A. Uh-huh.</p>
<p style="text-align: right;">Page 167</p> <p>1 about corresponding responsibility, aren't they?</p> <p>2 A. Yes.</p> <p>3 Q. I didn't see that you had mentioned</p> <p>4 corresponding responsibility in your previous 66</p> <p>5 pages, so I'm curious as to why it's in your</p> <p>6 conclusion paragraph.</p> <p>7 A. For that particular SOM period?</p> <p>8 Q. Yeah.</p> <p>9 A. Well, because that --</p> <p>10 Q. Well -- go ahead.</p> <p>11 A. That particular SOM period dealt with</p> <p>12 20 percent over average, which required them to</p> <p>13 call the pharmacies and make a determination of</p> <p>14 why these pharmacies are going 20 percent over.</p> <p>15 A lot of the order lines, the log sheet</p> <p>16 lines, had comments in there that were totally</p> <p>17 inappropriate, such as, I've got a patient on</p> <p>18 320 oxy 30s every two weeks and I need more. New</p> <p>19 pain clinic moved into the area, and they were</p> <p>20 approved. They were just approved.</p> <p>21 Furthermore, those log sheets, based on</p> <p>22 deposition testimony and documents, show that,</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. -- paragraph which started "Finally"?</p> <p>2 Quote, this allowed prescriptions issued</p> <p>3 without legitimate medical purpose to be filled</p> <p>4 unfettered and undetected because Albertsons did</p> <p>5 not have a formal corresponding responsibility</p> <p>6 until 2016 and formal corresponding responsibility</p> <p>7 training until 2018.</p> <p>8 Do you see that?</p> <p>9 A. That's correct.</p> <p>10 Q. Can you point us to one prescription that</p> <p>11 was issued without a legitimate medical purpose?</p> <p>12 A. I didn't get a chance to look at</p> <p>13 prescriptions to determine whether they were</p> <p>14 issued for -- without a legitimate medical</p> <p>15 purpose.</p> <p>16 MR. MIGLIORI: And just because you went</p> <p>17 too quickly, objection. Foundation.</p> <p>18 Go ahead.</p> <p>19 BY MR. GIBBONS:</p> <p>20 Q. So you cannot point us to one</p> <p>21 prescription that was issued without a legitimate</p> <p>22 medical purpose?</p>

<p style="text-align: right;">Page 170</p> <p>1 MR. MIGLIORI: Objection. Foundation.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: Well, I didn't get a chance</p> <p>4 to review those prescriptions. However, Carmen</p> <p>5 Catizone did, and I looked at his findings.</p> <p>6 BY MR. GIBBONS:</p> <p>7 Q. Okay. Well, Catizone's findings are</p> <p>8 Catizone's findings. You can adopt them or not</p> <p>9 adopt them.</p> <p>10 I'm asking if you personally looked at</p> <p>11 whether one prescription was issued without a</p> <p>12 legitimate medical purpose?</p> <p>13 MR. MIGLIORI: Objection. Asked and</p> <p>14 answered.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: Well, I would have to say</p> <p>17 that based on the log entries, I'm pretty sure</p> <p>18 that there were a few prescriptions that were</p> <p>19 issued without legitimate medical purpose and --</p> <p>20 that's my opinion.</p> <p>21 However, after reading Catizone and</p> <p>22 basically looking at Catizone's analysis, I had no</p>	<p style="text-align: right;">Page 172</p> <p>1 BY MR. GIBBONS:</p> <p>2 Q. I understand that. You've written that.</p> <p>3 A. Uh-huh.</p> <p>4 Q. But you can't point us to any</p> <p>5 prescription that actually fits that bill, can</p> <p>6 you?</p> <p>7 MR. MIGLIORI: Objection. Foundation.</p> <p>8 Go ahead.</p> <p>9 Asked and answered.</p> <p>10 THE WITNESS: I can't tell you a specific</p> <p>11 prescription, no.</p> <p>12 BY MR. GIBBONS:</p> <p>13 Q. Let me ask you to turn to page 68. And</p> <p>14 in the only full paragraph on that page it starts</p> <p>15 out, It should be noted.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. I'm going to ask about this</p> <p>19 sentence. You write, This apathetic attitude is</p> <p>20 truly remarkable, considering the corresponding</p> <p>21 responsibility is not only in place to resolve red</p> <p>22 flags that may be indicative of diversion and</p>
<p style="text-align: right;">Page 171</p> <p>1 problem saying that.</p> <p>2 BY MR. GIBBONS:</p> <p>3 Q. Okay. Can you point to one prescription</p> <p>4 that was filled improperly because of a lack of</p> <p>5 training at Albertsons?</p> <p>6 MR. MIGLIORI: Objection. Foundation.</p> <p>7 Go ahead.</p> <p>8 THE WITNESS: Well, the one prescription</p> <p>9 that I discussed, the 320 oxy 30s, that's a hell</p> <p>10 of a lot of MMEs, and there was no indication of</p> <p>11 what that pharma- -- what they were treating. No</p> <p>12 indication of -- if no one is doing the</p> <p>13 corresponding responsibility analysis and no one</p> <p>14 is doing, on the distribution side, an analysis of</p> <p>15 what they're ordering anomaly-wise, then, you</p> <p>16 know -- so, no, I mean, I can't point to it. But</p> <p>17 based on what I saw in the call logs and what I</p> <p>18 saw in Catizone's report, based on that, I would</p> <p>19 say that they were not doing their corresponding</p> <p>20 responsibility; and therefore, if they're not</p> <p>21 doing their corresponding responsibility,</p> <p>22 prescriptions are leaving without any type of...</p>	<p style="text-align: right;">Page 173</p> <p>1 determine if a prescription was written for a</p> <p>2 legitimate medical purpose, but can also prevent</p> <p>3 the misuse/abuse of a controlled substance that</p> <p>4 could result in overdose or death.</p> <p>5 Do you see that?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Yes?</p> <p>8 A. I stand by that.</p> <p>9 Q. What do you mean by "apathetic"?</p> <p>10 A. Well, you've got to read the whole</p> <p>11 paragraph. The --</p> <p>12 Q. I did.</p> <p>13 A. -- fact of the matter is --</p> <p>14 Q. I'm asking you how use the word</p> <p>15 "apathetic." What does it mean to you?</p> <p>16 A. It means that they just didn't -- it was</p> <p>17 almost like, ah, so what. Okay? And let me</p> <p>18 explain why.</p> <p>19 In this case, Provenzano is a pharmacist</p> <p>20 is and appears to be a pharmacist who's been a</p> <p>21 pharmacist for a long period of time. The fact is</p> <p>22 one of his people said, we have a problem with</p>

<p style="text-align: right;">Page 174</p> <p>1 this one pharmacy, and that pharmacy was ignoring 2 red flags. It appears that they didn't pick up or 3 were ignoring red flags. 4 Instead of saying, well, we need to look 5 at this, his thing was, well, that was three or 6 four years ago. And -- they were doing a 7 retrospective analysis. That's three, four years 8 ago and, quite frankly, we didn't have a 9 dispensing policy in place during that period of 10 time, and even if we did, the country's 11 consciousness was not in tune with what was going 12 on with the opioid crisis. 13 I'm not looking at it as an expert now. 14 I'm stunned as an expert. I'm looking at it as a 15 pharmacist. When you're a pharmacist, your 16 responsibility is to your patients. Okay? Your 17 responsibility is to ensure that your patients 18 that are accepting drugs being dispensed from your 19 pharmacy -- and when they leave, you're confident 20 that that drug is not going to harm them. Okay? 21 If you're not conducting a red flag 22 analysis, you don't have any idea what's going to</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. MIGLIORI: Objection. He's answering 2 your questions. 3 Go ahead. 4 Object to form. 5 THE WITNESS: I'm not talking as an 6 expert in dispensing. I'm telling you now that, 7 in addition to my problems as a regulator, as a 8 pharmacist, I have a problem with it. 9 This is -- and, look, don't get me wrong. 10 I teach corresponding responsibility, so I could 11 do that. But that was not my charge in this. But 12 when I find documents where a pharmacist is 13 basically downplaying the fact that, you know, it 14 wasn't really within the consciousness of the 15 country during 2014 so it wasn't really an opioid 16 crisis and we didn't do anything until 2016, yeah, 17 that's an apathetic attitude. That's why -- 18 BY MR. GIBBONS: 19 Q. Is that an opinion you intend to offer at 20 trial? 21 A. If I'm asked -- 22 MR. MIGLIORI: The report speaks for</p>
<p style="text-align: right;">Page 175</p> <p>1 happen to that drug. So yeah, that was an 2 apathetic attitude from a vice-president of 3 pharmacy operations on, yeah, so what? We didn't 4 have a policy. We had a -- 2013 or '12 we sent 5 out some guidance, but there was no policy, and 6 then we had the policy in 2016 and so -- stop. 7 Q. I thought earlier in the deposition we -- 8 I had heard you were not here as an expert to 9 offer expert opinions on dispensing; is that 10 right? 11 MR. MIGLIORI: Objection. You've asked 12 him repeatedly questions about corresponding 13 responsibility, and now you're trying to pin him 14 back. 15 MR. GIBBONS: No, no, no, I'm not trying 16 to do anything. 17 BY MR. GIBBONS: 18 Q. I'm using the words you use in your 19 report. 20 But I thought you said earlier you're not 21 here as an expert on Albertsons' dispensing 22 policy. Is that correct?</p>	<p style="text-align: right;">Page 177</p> <p>1 itself. 2 Go ahead. 3 THE WITNESS: If I'm asked, yes. 4 BY MR. GIBBONS: 5 Q. And the complete basis that underlined 6 that opinion is in your report; is that fair to 7 say? 8 A. Yes. 9 MR. MIGLIORI: And he just testified. 10 BY MR. GIBBONS: 11 Q. I'm sorry? 12 A. Yes. 13 Q. Turn over to page 69, please. 14 A. Okay. 15 Q. You state at the bottom of the first full 16 paragraph there that, However, Albertsons did not 17 require the pharmacist to use any specific 18 resource, but left it up to the pharmacist's 19 discretion on what to do; that is, use 20 professional judgment when they encounter a red 21 flag. There was no affirmative requirement that a 22 pharmacist investigate when they encounter a red</p>

<p style="text-align: right;">Page 178</p> <p>1 flag.</p> <p>2 Do you see that?</p> <p>3 A. Yes. Yes.</p> <p>4 Q. And you footnote a Covaci deposition on</p> <p>5 one page; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any other basis for making</p> <p>8 that statement?</p> <p>9 A. Yeah. If you go back and look at</p> <p>10 corresponding responsibility, they did send out</p> <p>11 a -- in 2012 or '13, they sent out, like, an</p> <p>12 e-mail guidance. They didn't incorporate it until</p> <p>13 2016.</p> <p>14 Now, the problem with Albertsons is, if</p> <p>15 it's not incorporated into a policy and procedure,</p> <p>16 it's not a disciplinary action. So they can't</p> <p>17 take discipline on a pharmacist for not doing</p> <p>18 corresponding responsibility.</p> <p>19 Plus, in their document -- in the</p> <p>20 documents, it showed that it was just suggestions</p> <p>21 on what to look at, but they never really said you</p> <p>22 must look at it, you must look at the PDMP, you</p>	<p style="text-align: right;">Page 180</p> <p>1 A. Well, yeah, I just explained it wasn't</p> <p>2 put into formal policy.</p> <p>3 Q. Yeah.</p> <p>4 A. If it's not in formal policy, then it's</p> <p>5 not disciplinary. You can't take a disciplinary</p> <p>6 action if it's not in policy.</p> <p>7 Q. Yeah. You explained that.</p> <p>8 A. Yeah. And earlier, in some of the</p> <p>9 documents, it was a suggested -- suggested that</p> <p>10 they do that. There was no requirement that they</p> <p>11 did it.</p> <p>12 The requirement didn't happen until 2016</p> <p>13 or '17.</p> <p>14 Q. How come you didn't footnote that?</p> <p>15 A. Because it was in the documents, and</p> <p>16 those documents were footnoted. Probably</p> <p>17 different area, but it was footnoted.</p> <p>18 Q. Let me ask you to turn your attention</p> <p>19 further down that page. In the middle of the page</p> <p>20 it starts to discuss PDMP.</p> <p>21 Do you see that?</p> <p>22 A. Yes, sir.</p>
<p style="text-align: right;">Page 179</p> <p>1 must look at this, you must look at that. Not</p> <p>2 until 2016 or '17.</p> <p>3 So the fact is is, yeah, that</p> <p>4 basically -- there's no affirmative requirement</p> <p>5 that a pharmacist investigate when they encounter</p> <p>6 a red flag because it was all just suggestive.</p> <p>7 Q. All you cited was Covaci's deposition,</p> <p>8 right?</p> <p>9 A. I cite -- yeah, I cited Covaci's</p> <p>10 deposition. Yes.</p> <p>11 Q. And what you just answered was a further</p> <p>12 support to that sentence?</p> <p>13 A. I'm sorry?</p> <p>14 Q. Your answer, your previous answer, was in</p> <p>15 further support of that statement, that there was</p> <p>16 no affirmative requirement that a pharmacist</p> <p>17 investigate when they encounter a red flag?</p> <p>18 A. I don't -- I'm not following you. You</p> <p>19 need to say that again.</p> <p>20 Q. Well, you footnoted that sentence with</p> <p>21 Covaci's dep. I asked you whether there's any</p> <p>22 other basis besides Covaci's dep.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Okay. The September 27, 2018 version of</p> <p>2 the retail pharmacies policies and procedures</p> <p>3 manual required all pharmacists to register with</p> <p>4 the PDMP and check the PDMP for controlled</p> <p>5 substance prescriptions when circumstances exist</p> <p>6 that cause the pharmacist to question the validity</p> <p>7 or appropriateness of the prescription. This was</p> <p>8 the first time Albertsons required its pharmacists</p> <p>9 to register with their state PDMP.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you find that deficient?</p> <p>13 A. It depends. I don't know when the full</p> <p>14 PDMP started in Texas. I think Texas was one of</p> <p>15 those states that had variations of the PDMP.</p> <p>16 They set up in different time periods.</p> <p>17 So I'm not sure when Texas did the full</p> <p>18 thing, but I find -- because it was a national</p> <p>19 requirement, I -- yeah, I have a problem with it.</p> <p>20 Because you have states like New York that have</p> <p>21 been doing it since 1920. So...</p> <p>22 Q. Let's talk about your opinion in relation</p>

<p style="text-align: right;">Page 182</p> <p>1 to Tarrant County.</p> <p>2 A. Okay.</p> <p>3 Q. Isn't it true that Texas didn't mandate</p> <p>4 pharmacists checking the PDMP until March of 2020?</p> <p>5 A. Okay. Just because the state doesn't</p> <p>6 mandate it doesn't mean that the company can't</p> <p>7 mandate it so they can better perform</p> <p>8 corresponding responsibility.</p> <p>9 The PDMP is probably one of the single</p> <p>10 most useful tools to show patients who are doctor</p> <p>11 shopping, patients who are pharmacy shopping,</p> <p>12 patients who are doing thing illegally.</p> <p>13 So if the resource is there and all you</p> <p>14 have to do is sign up for it, I don't see why you</p> <p>15 wouldn't mandate it. It doesn't make any sense.</p> <p>16 Q. Do you know when the PDMP became</p> <p>17 accessible to pharmacists in Texas?</p> <p>18 MR. MIGLIORI: Objection. Foundation.</p> <p>19 THE WITNESS: I do not.</p> <p>20 BY MR. GIBBONS:</p> <p>21 Q. Would you agree with me that a company</p> <p>22 can't mandate pharmacist to check the PDMP if it,</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. MIGLIORI: Objection. Foundation.</p> <p>2 THE WITNESS: State regs related to what?</p> <p>3 BY MR. GIBBONS:</p> <p>4 Q. PDMP.</p> <p>5 A. I don't know.</p> <p>6 MR. MIGLIORI: Objection. Foundation.</p> <p>7 BY MR. GIBBONS:</p> <p>8 Q. Let me ask you to turn to page 70. I</p> <p>9 promise we're getting near the end.</p> <p>10 A. Okay.</p> <p>11 Q. You've got a heading that says,</p> <p>12 Controlled substance prescriptions dispensed</p> <p>13 without resolving red flags.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Let me ask you to go back to Exhibit</p> <p>17 Number 3 --</p> <p>18 A. Okay.</p> <p>19 Q. -- which is your 8/22/2022 report.</p> <p>20 A. Okay.</p> <p>21 Q. And turn to page 153.</p> <p>22 A. I got it.</p>
<p style="text-align: right;">Page 183</p> <p>1 in fact, is not accessible in that state?</p> <p>2 MR. MIGLIORI: Objection. Foundation.</p> <p>3 THE WITNESS: I'd have to see what the</p> <p>4 accessibility parameters are. Because it depends</p> <p>5 on the state and it depends on what they're --</p> <p>6 what they're allowed to look at. Some states you</p> <p>7 could look at everything. Some states you just</p> <p>8 could look at schedule IIs. Some states -- it</p> <p>9 just depends. So I don't know. I don't know the</p> <p>10 basis of it.</p> <p>11 But remember -- I know this is a Tarrant</p> <p>12 County case, but this is a national -- a</p> <p>13 national -- a company that goes nationally. So</p> <p>14 why wouldn't you put that in your policies and</p> <p>15 procedures? Even if, in Texas, they weren't</p> <p>16 allowed to access until 2016 or whatever, it still</p> <p>17 should be in their policies and procedures for the</p> <p>18 other states.</p> <p>19 BY MR. GIBBONS:</p> <p>20 Q. Do you know one way or the other whether</p> <p>21 Albertsons was out of compliance with state regs</p> <p>22 in Texas in 2000 -- up to 2017?</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Are you there?</p> <p>2 A. Yes.</p> <p>3 Q. You copied that paragraph word for word</p> <p>4 except for the parties' names; isn't that right?</p> <p>5 A. I believe that's correct. Yes.</p> <p>6 Q. Why did you do that?</p> <p>7 A. Because every time I read a report</p> <p>8 like -- that I'm going to make reference to,</p> <p>9 there's no need to change it. It's -- I look at</p> <p>10 what is in the report, I read the whole report, I</p> <p>11 look at what's in the report, I look at his</p> <p>12 conclusion. And if there's nothing different from</p> <p>13 his previous reports or his statements, I just</p> <p>14 include it as the -- as the paragraphs making</p> <p>15 reference to his reports.</p> <p>16 Q. Okay. So here -- and I'm in Exhibit 1,</p> <p>17 page 70.</p> <p>18 A. Okay.</p> <p>19 Q. You state, As part of my review of</p> <p>20 materials in this case, I reviewed a draft of the</p> <p>21 expert report of Carmen Catizone. Mr. Catizone</p> <p>22 opines as the controlled substances prescriptions</p>

<p style="text-align: right;">Page 186</p> <p>1 dispensed by Albertsons despite the presence of 2 unresolved red flags. 3 Do you see that? 4 A. Yes. 5 Q. That's flat-out false, isn't it? 6 A. I don't understand. 7 Q. Carmen Catizone's draft report in 2022 8 never mentioned Albertsons. 9 A. No. This is from Albertsons -- his 10 recent report. 11 Q. What draft Carmen Catizone recent report 12 are you talking about? 13 A. Catizone did a report for this -- this 14 document, for this case. 15 Q. You say, I've reviewed a draft of the 16 expert report of Carmen Catizone. 17 A. Yes. 18 Q. What draft report of Carmen Catizone did 19 you review? 20 A. The one for this particular case. 21 Q. You believe that there's a draft Carmen 22 Catizone report as opposed to a final --</p>	<p style="text-align: right;">Page 188</p> <p>1 that says, "Conclusion." 2 A. Yes. 3 Q. Why do we have a second conclusion? 4 A. Because the first conclusion that we 5 talked about was on SOM period 2. 6 Q. What does this conclusion have to do 7 with? 8 A. It's an overall conclusion. 9 Q. And then, on page 71, you continue your 10 conclusion, right? 11 A. Yeah. 12 Q. Why is the font different on 71 from the 13 rest of your report? 14 A. Oh. Because when I made my -- when I 15 signed it, I was at home, and so I just sent 16 the -- I just faxed the signature page. 17 Q. And at the very bottom, before your 18 signature, you say, For these reasons and the 19 reasons stated herein, it is my opinion that 20 defendant caused and was a substantial factor in 21 causing the pharmaceutical opioid epidemic in 22 Tarrant County.</p>
<p style="text-align: right;">Page 187</p> <p>1 MR. MIGLIORI: Oh -- 2 BY MR. GIBBONS: 3 Q. -- Carmen Catizone report? 4 MR. MIGLIORI: -- geez. 5 THE WITNESS: No. 6 MR. MIGLIORI: Objection to form. 7 Go ahead. 8 THE WITNESS: No. I reviewed the final 9 report. I reviewed the final report -- actually, 10 the final report is broken down, but I reviewed 11 the final report, and that's what it is. It says 12 draft, but it's a final -- 13 BY MR. GIBBONS: 14 Q. No, no. It doesn't say -- it says, I 15 reviewed a draft of the expert report. 16 MR. MIGLIORI: He's answering your 17 question. 18 THE WITNESS: It's -- it's the expert -- 19 Carmen Catizone's expert report. That's what I 20 reviewed. 21 BY MR. GIBBONS: 22 Q. Below that you have another paragraph</p>	<p style="text-align: right;">Page 189</p> <p>1 Do you see that? 2 A. Yes. 3 Q. Can you point to one opioid prescription 4 that was diverted or oversupplied in Tarrant 5 County? 6 MR. MIGLIORI: Objection. Asked and 7 answered. And foundation. 8 Go ahead. 9 THE WITNESS: Again, I can't point to one 10 prescription. I can report the policies and 11 procedures in place, the call logs, and the 12 findings of the Catizone expert report. And based 13 on that -- based on all the other documents I 14 reviewed and the depositions, I make that 15 statement. It's my opinion. I can't point to one 16 specific prescription, but I think there's more 17 than enough information in the report to show how 18 that occurred. 19 MR. MIGLIORI: I want to make sure my 20 objection was recorded as including foundation. 21 Go ahead. 22</p>

<p style="text-align: right;">Page 190</p> <p>1 BY MR. GIBBONS:</p> <p>2 Q. You read David Beck's deposition</p> <p>3 testimony. I think you said that. Right?</p> <p>4 A. There's three Beck depositions, if I'm</p> <p>5 not mistaken.</p> <p>6 Q. Did you read them all?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And Beck claimed in his deposition</p> <p>9 that the DEA visited the distribution center at</p> <p>10 Ponca.</p> <p>11 Do you recall that?</p> <p>12 A. I recall there was an inspection of</p> <p>13 Ponca. Yes.</p> <p>14 Q. Yes. More than one?</p> <p>15 A. I can't tell you if it was more than one.</p> <p>16 Q. Okay. You would agree with me that the</p> <p>17 DEA would have inspected distribution centers</p> <p>18 cyclically during that time frame that you were</p> <p>19 employed by the DEA, right?</p> <p>20 A. Yes.</p> <p>21 Q. And when the DEA inspected, whenever they</p> <p>22 did that, they could have inspected the SOMs</p>	<p style="text-align: right;">Page 192</p> <p>1 anyway.</p> <p>2 Q. Now, your expert report dated April of</p> <p>3 2024 -- and you analyzed, in part, Albertsons'</p> <p>4 policies and procedures from as far back as 2001</p> <p>5 and 2002, right?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Yes?</p> <p>8 A. Yes.</p> <p>9 Q. And you detailed, as you did in your</p> <p>10 report, various deficiencies in the written</p> <p>11 policies and procedures, right?</p> <p>12 A. Uh-huh.</p> <p>13 Q. That's something that the DEA had access</p> <p>14 to if and when they investigated and inspected the</p> <p>15 distribution center at Ponca, right?</p> <p>16 A. Can they -- no, they didn't have access</p> <p>17 to all of the documents that I had. They didn't</p> <p>18 have access to depositions. They didn't have --</p> <p>19 all they had was the policies and procedures in</p> <p>20 place and a verbal explanation of how it works.</p> <p>21 They didn't have everything that I had.</p> <p>22 And -- and -- to be fair to those</p>
<p style="text-align: right;">Page 191</p> <p>1 programs at these distribution centers, right?</p> <p>2 A. I'm sure they did inspect the SOMs</p> <p>3 program.</p> <p>4 Q. And they could have looked at the</p> <p>5 policies and procedures in relation to the</p> <p>6 SOMs programs, right?</p> <p>7 A. What they do is they request policies and</p> <p>8 procedures and they request a -- an explanation</p> <p>9 from the distribution center manager, the ops</p> <p>10 manager, explain how this works.</p> <p>11 Q. And are you aware of any violations</p> <p>12 arising out of any DEA inspections of Albertsons'</p> <p>13 distribution center?</p> <p>14 A. I don't recall if there were any</p> <p>15 violations.</p> <p>16 Q. To your knowledge, was Albertsons'</p> <p>17 distribution center ever the subject of a DEA</p> <p>18 enforcement action?</p> <p>19 A. Of an enforcement action? You mean --</p> <p>20 Q. Yeah.</p> <p>21 A. I don't recall if there was, but I -- I</p> <p>22 doubt very much it was. Not during my tenure</p>	<p style="text-align: right;">Page 193</p> <p>1 inspectors, those inspectors are there to look and</p> <p>2 make sure there's a SOM program in place, and they</p> <p>3 have to rely on what the company is telling them.</p> <p>4 If they were going to -- to do a SOM inspection,</p> <p>5 they would have to be there for a month because</p> <p>6 they'd have to look at how the threshold works.</p> <p>7 They would have to look at how they're monitoring</p> <p>8 unusual frequency, how they're monitoring</p> <p>9 substantial deviation. They don't have that kind</p> <p>10 of time. They can't monitor the day-to-day</p> <p>11 everything. They have to get in and get out</p> <p>12 because they have another inspection to go</p> <p>13 through.</p> <p>14 So I had a lot more than they would ever</p> <p>15 have, because I got to actually look at what the</p> <p>16 employees were saying about the system. They</p> <p>17 didn't have that luxury.</p> <p>18 Q. I understand that. But you detailed, in</p> <p>19 part, in your report deficiencies in the written</p> <p>20 policies and procedures --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- right?</p>

<p style="text-align: right;">Page 194</p> <p>1 A. Uh-huh.</p> <p>2 Q. Yes?</p> <p>3 A. Yes.</p> <p>4 Q. But -- written policies and procedures</p> <p>5 would have been available to the DEA on their</p> <p>6 inspections, as I think you've previously</p> <p>7 testified, right?</p> <p>8 A. I don't know what was given to them.</p> <p>9 Q. I'm not asking that.</p> <p>10 A. See, but that's the point. The point is</p> <p>11 what you're asking me -- and I'm telling you --</p> <p>12 you're asking me to tell -- to agree with you</p> <p>13 based on what they've -- they saw. And I have no</p> <p>14 idea what they saw. I have no idea what they</p> <p>15 presented. I don't know.</p> <p>16 Q. I'm not asking you what they saw.</p> <p>17 A. Okay.</p> <p>18 Q. I'm asking you, as the head of the DEA at</p> <p>19 that time, were the written policies and</p> <p>20 procedures in place at the distribution center</p> <p>21 available to the DEA during their inspection?</p> <p>22 A. I would hope so. Yes.</p>	<p style="text-align: right;">Page 196</p> <p>1 VIDEO TECHNICIAN: The time is 1:19 p.m.</p> <p>2 This begins unit number 4. We're on the record.</p> <p>3 EXAMINATION BY COUNSEL FOR PUBLIX SUPER MARKETS</p> <p>4 BY MR. KOHLER:</p> <p>5 Q. Okay. Good afternoon, Mr. Rannazzisi. I</p> <p>6 introduced myself to you earlier. Michael Kohler</p> <p>7 for Publix Super Markets, Inc.</p> <p>8 We're in Washington, D.C., today, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And we're at the offices of Motley Rice,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Just to follow up on some questions you</p> <p>14 were asked earlier, Due Diligence Compliance is</p> <p>15 your company, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you mentioned that you've made about</p> <p>18 \$1.5 million or so since late 2016, early 2017; is</p> <p>19 that fair?</p> <p>20 A. Yeah, probably since early -- mid-2017.</p> <p>21 Q. Okay. And that was -- and all that</p> <p>22 revenue was generated through Due Diligence</p>
<p style="text-align: right;">Page 195</p> <p>1 Q. And as far as you know, you don't have</p> <p>2 any evidence that the DEA, on these inspections,</p> <p>3 ever pointed out any deficiencies in the written</p> <p>4 policies and procedures that you have now</p> <p>5 testified were deficient some 20-plus years ago;</p> <p>6 isn't that right?</p> <p>7 A. I do not know because I have not seen</p> <p>8 reports that indicate that. I don't know.</p> <p>9 MR. GIBBONS: Okay. I'm done, I think.</p> <p>10 MR. KOHLER: Do you want to take a break?</p> <p>11 MR. MIGLIORI: Well, lunch has been here</p> <p>12 for a little while, so do you want to do that?</p> <p>13 Procedurally -- I know that this is a combined</p> <p>14 deposition. I don't know if I'm going to have any</p> <p>15 kind of cleanup or redirects. I don't care when I</p> <p>16 do it. I can do it at the very end. I can do it</p> <p>17 after -- I don't know how you plan to divide up</p> <p>18 your time, I guess is my question.</p> <p>19 MR. GIBBONS: We can go off the record.</p> <p>20 VIDEO TECHNICIAN: The time is 12:48 p.m.</p> <p>21 This ends unit 3. We're off the record.</p> <p>22 (A recess was taken.)</p>	<p style="text-align: right;">Page 197</p> <p>1 Compliance, LLC?</p> <p>2 A. Yes.</p> <p>3 Q. And was all that for work that you've</p> <p>4 done on the opiate litigation?</p> <p>5 A. Yeah. I mean, encompassing that is,</p> <p>6 like, presentations that I've been asked to do</p> <p>7 where they'll pay whatever.</p> <p>8 Q. Okay.</p> <p>9 A. Things like that.</p> <p>10 Q. Of the -- and has Motley Rice hired you</p> <p>11 in multiple -- Motley Rice hired you in the Cobb</p> <p>12 County litigation, too, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And they've hired you in other</p> <p>15 litigation; is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. All right. How much -- and did you enter</p> <p>18 into a written contract with Motley Rice?</p> <p>19 A. Yes.</p> <p>20 Q. And does that contract set forth the</p> <p>21 terms and conditions of your engagement?</p> <p>22 A. I believe it does. Yes.</p>

<p style="text-align: right;">Page 198</p> <p>1 Q. And how much -- and is it your 2 expectation that Motley Rice pays your bills? 3 A. Yes. 4 Q. How much has Motley Rice paid -- of the 5 \$1.5 million that Due Diligence Compliance has 6 received, how much of that has been paid by 7 Motley Rice? 8 A. For the two -- I don't have the bills 9 handy. Probably -- this is a guesstimate because 10 I just don't remember -- but probably around 11 300,000 total. 12 Q. And who's your point of contact at 13 Motley Rice? 14 A. Mr. Elsner and Mr. Migliori. 15 Q. And you're referring to Mr. Don Migliori 16 here? 17 A. Yes. 18 Q. Let's look at some invoices, I think, in 19 this case. 20 (Rannazzisi Deposition Exhibit 6 marked 21 for identification and attached to the 22 transcript.)</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Is this the detailed billing, Exhibit 6? 2 A. No. There's -- I'm sure there's another 3 document of detailed billing. 4 Q. And that detailed billing shows what you 5 did on what day and how much time you spent on it? 6 A. Yeah, I'm pretty sure that's correct. 7 Q. So this is just a summary -- 8 A. Yes. 9 Q. -- invoice that was given to us, not the 10 actual invoice that was submitted to Motley Rice? 11 A. Well, there are two invoices. This is 12 the invoice that they pay on. 13 Q. Okay. On here there's a \$500 an hour 14 number and a \$250 an hour number, correct? 15 A. Right. 16 Q. What's the 250 an hour number? 17 A. Travel time. 18 Q. All right. So you charge 250 for travel? 19 A. Yes. 20 Q. All right. How did you come up with your 21 \$500 an hour rate? 22 A. That was negotiated in 2018, I guess,</p>
<p style="text-align: right;">Page 199</p> <p>1 BY MR. KOHLER: 2 Q. I'm going to hand you what I've marked as 3 Exhibit 6. 4 These are invoices you've submitted with 5 respect to your work on the Cobb County case, 6 correct? 7 A. Yes. 8 Q. And this invoice -- the first invoice is 9 for a little over \$15,000, correct? 10 A. Yes. 11 Q. And the next invoice is a little over 12 \$75,000, right? 13 A. Yes. 14 Q. And is this the invoice that you've 15 submitted to Motley Rice for payment? 16 A. Yes. These were submitted for payment. 17 Yes. 18 Q. All right. 19 A. I've been paid for both of these. 20 Q. All right. And do you provide detailed 21 billing with respect to the work you perform? 22 A. I do provide detailed billing. Yes.</p>	<p style="text-align: right;">Page 201</p> <p>1 with a different law firm. 2 Q. Have you charged more than \$500 for your 3 time? 4 A. No. 5 Q. Have you charged less than \$500 for your 6 time? 7 A. Yeah. I believe we started at 300. 8 Q. And this \$500 an hour, that's been your 9 time in the Cobb County case? 10 A. Yes. 11 Q. And it looks -- did you start rendering 12 services on the Cobb County case starting in 13 September of 2022? 14 A. Yes. 15 Q. We met -- prior to the deposition, when 16 we were exchanging pleasantries, I think you said 17 you drove over today -- to the office today; is 18 that right? 19 A. Yes. 20 Q. Was that from Annandale, Virginia? 21 A. Yes. 22 Q. How long have you lived in Annandale?</p>

<p style="text-align: right;">Page 202</p> <p>1 A. Probably 20 years.</p> <p>2 Q. I don't believe there's any Publix</p> <p>3 Super Markets in and around Annandale; is that</p> <p>4 fair?</p> <p>5 A. That's correct.</p> <p>6 Q. Have you ever lived in Cobb County,</p> <p>7 Georgia?</p> <p>8 A. No.</p> <p>9 Q. Do you have any family or friends that</p> <p>10 live in Cobb County?</p> <p>11 A. No.</p> <p>12 Q. Have you ever worked in Cobb --</p> <p>13 A. Well, I take that back. I've got -- I'm</p> <p>14 pretty sure I've got friends that live in Cobb</p> <p>15 County, or thereabouts. Yeah.</p> <p>16 Q. Well, thereabouts is -- there's --</p> <p>17 A. I mean, Cobb County -- yeah. I mean,</p> <p>18 where Cobb County sits, I think that's a suburb of</p> <p>19 Atlanta, so yeah, I'm pretty sure there's a couple</p> <p>20 of --</p> <p>21 Q. Who are your friends that you believe</p> <p>22 live in Cobb County?</p>	<p style="text-align: right;">Page 204</p> <p>1 as you sit here today, do you ever recall working</p> <p>2 in Cobb County?</p> <p>3 A. No. I mean, I don't recall working in</p> <p>4 Cobb County.</p> <p>5 Q. You've never had an office in Cobb</p> <p>6 County, fair?</p> <p>7 A. No. It's in Atlanta.</p> <p>8 Q. Have you ever worked in the -- have you</p> <p>9 ever had an office in the State of Georgia?</p> <p>10 A. I've worked in the State of Georgia.</p> <p>11 There's a DAL -- there's multiple DEA offices in</p> <p>12 Georgia.</p> <p>13 Q. I'm not talking about on a temporary</p> <p>14 basis. I'm talking, you know, kind of a permanent</p> <p>15 basis.</p> <p>16 A. Oh, no, never worked there permanently.</p> <p>17 I was never assigned there.</p> <p>18 Q. What's the furthest south you ever lived?</p> <p>19 A. I guess it would be Indianapolis.</p> <p>20 Q. With respect to your departure from the</p> <p>21 DEA, you would have considered a transfer to some</p> <p>22 cities, right, and not others; is that fair?</p>
<p style="text-align: right;">Page 203</p> <p>1 A. There were a couple of former agents.</p> <p>2 Q. And who are they?</p> <p>3 A. I think Dave Jacobson at one time lived</p> <p>4 there, and he's recently moved -- or moved last</p> <p>5 year.</p> <p>6 And another guy is, I think, Richard</p> <p>7 Crock.</p> <p>8 Q. Okay. Did you consult with Mr. Jacobson</p> <p>9 or Mr. Crock in preparing your report in this</p> <p>10 case?</p> <p>11 A. No.</p> <p>12 Q. Have you ever worked in Cobb County?</p> <p>13 A. I've been down in the Atlanta metro area</p> <p>14 working at DEA and working -- you know, so I might</p> <p>15 have been. I might not have been. I just don't</p> <p>16 know. I mean, Atlanta is a pretty big place.</p> <p>17 Q. Well, I'm not talking about Atlanta; I'm</p> <p>18 talking --</p> <p>19 A. Well, because --</p> <p>20 Q. -- about Cobb --</p> <p>21 A. -- we go into the suburbs. Yeah.</p> <p>22 Q. That's fine. But to your recollection,</p>	<p style="text-align: right;">Page 205</p> <p>1 A. Yeah.</p> <p>2 Q. The cities you would have considered</p> <p>3 transferring to was New York, Detroit,</p> <p>4 Indianapolis?</p> <p>5 A. Yes.</p> <p>6 Q. Would you have considered transferring to</p> <p>7 Atlanta or any place in Florida?</p> <p>8 A. Well, since I didn't -- you generally go</p> <p>9 where -- for work where you've worked before</p> <p>10 because you have connections with the state and</p> <p>11 locals in those areas, and it's real easy to pick</p> <p>12 up where you left off.</p> <p>13 So I had connections in all three states</p> <p>14 with state and local officers. And so, if I was</p> <p>15 going to go back and -- you know, into those</p> <p>16 states with DEA and continue, it's nice to have --</p> <p>17 to not have to go out and look at -- develop new</p> <p>18 relationships. You already have the relationships</p> <p>19 in place.</p> <p>20 Q. So you wouldn't have been interested in</p> <p>21 transferring to Atlanta or Florida, correct?</p> <p>22 A. I was looking for a transition that would</p>

<p style="text-align: right;">Page 206</p> <p>1 allow me just to take up and continue.</p> <p>2 Q. Have you ever taken opioids?</p> <p>3 A. I have taken opioids probably -- after my</p> <p>4 surgery, I had to take opioids.</p> <p>5 Q. Before that, had you?</p> <p>6 A. No.</p> <p>7 Q. And that was your open heart surgery you</p> <p>8 mentioned earlier?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Is that a yes?</p> <p>11 A. Okay. Yes.</p> <p>12 Q. Any issues with you taking the opioids?</p> <p>13 A. No. It was low-dose opioids. And I took</p> <p>14 three doses, four doses, then I was done it.</p> <p>15 Q. No issues with addiction? No issues with</p> <p>16 any disorders with that -- taking --</p> <p>17 A. No.</p> <p>18 Q. Have you had anybody close to you that</p> <p>19 has been addicted to opioids?</p> <p>20 A. Addicted? Well, I've known several</p> <p>21 people who have had problems with addiction.</p> <p>22 But -- not had problems with addiction, who have</p>	<p style="text-align: right;">Page 208</p> <p>1 A. No. I was pending assignment.</p> <p>2 Q. You were -- in terms of your supervisory</p> <p>3 responsibilities, that had changed pretty</p> <p>4 dramatically prior to your retirement, fair?</p> <p>5 A. Yeah. I was basically told, you're</p> <p>6 pending reassignment --</p> <p>7 Q. Right.</p> <p>8 A. -- and -- just to find an office.</p> <p>9 Q. And I believe that you went from</p> <p>10 supervising over 300 folks to none; is that right?</p> <p>11 A. Pretty much. Yeah.</p> <p>12 Q. Do you believe, as you sit here today,</p> <p>13 that the pharmaceutical industry had any role in</p> <p>14 that?</p> <p>15 A. I don't know if the pharmaceutical</p> <p>16 industry had a role in it. I know that the</p> <p>17 administrator, the acting administrator that was</p> <p>18 brought in, made that decision. So...</p> <p>19 Q. All right. But as you sit here today, do</p> <p>20 you believe that the pharmaceutical industry had</p> <p>21 any role in that decision to demote you?</p> <p>22 A. I'm not sure that -- the government</p>
<p style="text-align: right;">Page 207</p> <p>1 had relatives with problems with addiction.</p> <p>2 Q. Anybody close to you been addicted to</p> <p>3 opioids?</p> <p>4 A. I'm trying to think. Not close to me.</p> <p>5 But again, there's people I know whose child</p> <p>6 overdosed and died.</p> <p>7 Q. Have your children or family members have</p> <p>8 any issues with opioid use?</p> <p>9 A. No. I was -- I've been very, very</p> <p>10 blessed.</p> <p>11 Q. Anybody close to you have died because of</p> <p>12 an opioid issue?</p> <p>13 A. There was a judge I know whose son passed</p> <p>14 away from an opioid overdose.</p> <p>15 Q. And was that son close that you?</p> <p>16 A. No. The judge was close to me.</p> <p>17 Q. Now, I understand -- I've tried to read a</p> <p>18 lot of what you've already testified to, so I'm</p> <p>19 trying not to replot the same fields.</p> <p>20 But for clarification, prior to you</p> <p>21 retiring from the DEA, right before that, you were</p> <p>22 reassigned, correct?</p>	<p style="text-align: right;">Page 209</p> <p>1 doesn't work that way. I'm sure that the</p> <p>2 pharmaceutical industry was very vocal in what I</p> <p>3 was doing. But I can't sit here today and say</p> <p>4 they had a role in what -- I mean, they're vocal.</p> <p>5 But the -- a reassignment comes down to somebody</p> <p>6 in the Department of Justice or the Drug</p> <p>7 Enforcement Administration making a decision to</p> <p>8 reassign. And, you know --</p> <p>9 Q. When you --</p> <p>10 A. -- how that decision is made, I'd be</p> <p>11 speculating.</p> <p>12 Q. All right. When you retired, you were</p> <p>13 the subject of an investigation; is that right?</p> <p>14 A. I was the subject of two investigations.</p> <p>15 Q. Were those -- was one or both of those</p> <p>16 the result of some members of the House of</p> <p>17 Representatives accusing you of intimidating</p> <p>18 Congress?</p> <p>19 A. That's one of them. Yes.</p> <p>20 Q. And one of them was from the State of</p> <p>21 Tennessee and I believe the other one was from</p> <p>22 Pennsylvania; is that right?</p>

<p style="text-align: right;">Page 210</p> <p>1 A. Yes.</p> <p>2 Q. All right. You gave a -- in</p> <p>3 October 2017, you were featured on 60 Minutes,</p> <p>4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. I believe in that episode you recounted</p> <p>7 an incident in which the DOJ called you in to</p> <p>8 discuss your handling of the opioid crisis, right?</p> <p>9 A. That's correct.</p> <p>10 Q. That conversation upset you; is that</p> <p>11 fair?</p> <p>12 A. Did it upset me? I think it upset the</p> <p>13 deputy attorney generally more than it upset me.</p> <p>14 Q. Well, I'm not asking you about the deputy</p> <p>15 attorney general. I'm asking you. Did it upset</p> <p>16 you?</p> <p>17 A. It didn't upset me. Just --</p> <p>18 Q. Okay.</p> <p>19 A. -- I questioned it --</p> <p>20 Q. All right.</p> <p>21 A. -- because I was called over to --</p> <p>22 Q. Well, hold on. I'm just asking --</p>	<p style="text-align: right;">Page 212</p> <p>1 you see -- feel [sic] fit.</p> <p>2 THE WITNESS: I don't think it was upset.</p> <p>3 It was -- I was questioning why I was brought over</p> <p>4 there to discuss an investigation when we had done</p> <p>5 many, many investigations prior and then, all of a</p> <p>6 sudden, this investigation -- somehow it just was</p> <p>7 brought to the top and they just decided we need</p> <p>8 to know about this investigation.</p> <p>9 BY MR. KOHLER:</p> <p>10 Q. You went back to your staff after that</p> <p>11 conversation, correct?</p> <p>12 A. I did go back to my staff.</p> <p>13 Q. And you told your staff members that this</p> <p>14 was war, correct?</p> <p>15 A. I told them I want you to -- yeah, I said</p> <p>16 that, and I said, I want you to continue doing</p> <p>17 what you're doing and...</p> <p>18 Q. Who -- who was it war against? When you</p> <p>19 said it was -- you know, this is war, who was it</p> <p>20 war against?</p> <p>21 A. I think it was war against the people who</p> <p>22 were not following the Controlled Substances Act</p>
<p style="text-align: right;">Page 211</p> <p>1 MR. MIGLIORI: Let him finish.</p> <p>2 BY MR. KOHLER:</p> <p>3 Q. Well, I'm just asking if --</p> <p>4 MR. MIGLIORI: Let him finish.</p> <p>5 BY MR. KOHLER:</p> <p>6 Q. -- it upset you. I don't need to hear a</p> <p>7 soliloquy about --</p> <p>8 A. No --</p> <p>9 Q. -- everything else.</p> <p>10 A. No, that's fine --</p> <p>11 MR. MIGLIORI: He can answer your</p> <p>12 question.</p> <p>13 BY MR. MIGLIORI:</p> <p>14 Q. Did it upset you? Yes or no.</p> <p>15 MR. MIGLIORI: No, it's not a yes or no</p> <p>16 question. Upset isn't an objective -- if he had</p> <p>17 feelings about it -- you're asking his feelings.</p> <p>18 Let him emote. He's here to emote.</p> <p>19 BY MR. KOHLER:</p> <p>20 Q. I'm asking -- is the emote -- were you</p> <p>21 upset, yes or no?</p> <p>22 MR. MIGLIORI: Answer the question how</p>	<p style="text-align: right;">Page 213</p> <p>1 and the Code of Federal Regulations. And at that</p> <p>2 point in time, I said, I want you to continue,</p> <p>3 because everybody was, like, well, maybe -- you</p> <p>4 know, what are we going to do? We should probably</p> <p>5 stop.</p> <p>6 And you can't stop violat- -- you can't</p> <p>7 stop enforcing the law.</p> <p>8 Q. All right. And was that war against</p> <p>9 Publix when you made that declaration to your</p> <p>10 staff?</p> <p>11 A. It was anybody that was violating the</p> <p>12 Controlled Substances Act and the Code of Federal</p> <p>13 Regulations. People who were not complying. And</p> <p>14 I think it was pretty clear what we were talking</p> <p>15 about. We had people who were exerting external</p> <p>16 pressure on the Department of Justice to have us</p> <p>17 slow down. And we weren't going to do that.</p> <p>18 That's why I said, it's war.</p> <p>19 Q. All right.</p> <p>20 A. We don't -- we don't back down on our</p> <p>21 obligation to investigate violations of the Act</p> <p>22 and the Code of Federal Regulations.</p>

<p style="text-align: right;">Page 214</p> <p>1 Q. Was Publix -- when you made that 2 declaration, was Publix on your radar when you 3 said that? 4 A. No. 5 Q. All right. 6 A. It wasn't -- it was the cases that were 7 pending that we got called over for. 8 Q. Do you know who the attorney is for Cobb 9 County? The Cobb County attorney. 10 A. The Cobb County -- 11 MR. MIGLIORI: Objection. 12 THE WITNESS: -- district attorney? 13 BY MR. KOHLER: 14 Q. No. The attorney for Cobb County. 15 MR. MIGLIORI: I don't understand. In 16 this case? 17 MR. KOHLER: No. The Cobb County 18 attorney. 19 MR. MIGLIORI: Objection. Form. 20 BY MR. KOHLER: 21 Q. Do you know who Bill Rowling is? 22 A. No.</p>	<p style="text-align: right;">Page 216</p> <p>1 providing in this case? 2 A. No. It's through Motley Rice. 3 Q. To your knowledge, did Cobb County ever 4 approve that contract you entered into with 5 Motley Rice? 6 MR. MIGLIORI: Objection. Foundation. 7 THE WITNESS: I have no idea. 8 BY MR. KOHLER: 9 Q. Have you ever spoken to someone who had a 10 prescription filled from a Publix Cobb County 11 pharmacist? 12 A. No. 13 Q. Do you know a gentleman named Brian 14 Rucker? He worked with the DEA from -- I believe 15 from '99 to 2013. 16 Does that name ring a bell? 17 A. He was a diversion investigator? 18 Q. I'm -- just whatever you -- 19 A. I seem to remember that name as a 20 diversion investigator. 21 Q. Any -- do you recall anything about 22 Mr. Rucker, whether he was good at his job or</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. Have you ever spoken to Bill Rowling? 2 A. No. 3 Q. To your knowledge, have you ever met 4 Mr. Rowling? 5 A. No. 6 Q. Do you know who Lisa Cupid it? 7 A. No. 8 Q. She's the chairwoman of the Cobb County 9 Board of Commissioners. Have you ever spoken to 10 her? 11 A. No. 12 Q. Do you recall whether or not you've ever 13 given a presentation to the Cobb County Board of 14 Commissioners? 15 A. No, I don't believe I have. 16 Q. Do you know anybody -- any commissioner 17 that sits on the Cobb County board? 18 A. No, I do not. 19 Q. The contract that you -- well, let me 20 back up. 21 Did you ever enter into a contract with 22 Cobb County with respect to the services you're</p>	<p style="text-align: right;">Page 217</p> <p>1 trustworthy or anything that you may remember 2 about him or his reputation? 3 A. I don't recall. 4 Q. As you sit here today, nothing remarkable 5 about Mr. Rucker that you recall? 6 A. No. 7 Q. Have you, at any point in time, had any 8 professional or personal dealings with Lacey's 9 Pharmacy on Church Street in Marietta? 10 A. No. 11 Q. What about Lacey Drug Company on South 12 Main Street in Acworth? 13 A. No. 14 Q. What about Poole's Pharmacy on Whitlock 15 Avenue, next to Waffle House there? 16 A. No. 17 Q. What about Cooper Drug Company in Powder 18 Springs? 19 A. No. 20 Q. Prior to today, have you ever heard of 21 any of these pharmacies? 22 A. No.</p>

<p style="text-align: right;">Page 218</p> <p>1 Q. Have you ever shopped at a Publix 2 Super Market? 3 A. Yes. 4 Q. How many times have you shopped at a 5 Publix Super Market? 6 A. Quite a few, because there was a Publix 7 in Tennessee near Knoxville, and when my daughter 8 went to school, we used to go there. 9 Q. Did she go to the University of 10 Tennessee? 11 A. Yes, she did. 12 Q. How many times did you go to that 13 supermarket, give or take? 14 A. Probably 20. 15 Q. When is the last time you went to that 16 supermarket? 17 A. It had to be three years ago, four years 18 ago. 19 Q. Anything remarkable about your 20 experiences shopping at Publix during those 20 21 times or so? 22 A. No.</p>	<p style="text-align: right;">Page 220</p> <p>1 to have their prescriptions filled at Publix? 2 A. No. 3 Q. As you sit here today, do you believe 4 Publix is a threat to the folks in Cobb County? 5 MR. MIGLIORI: Objection. Form. 6 Go ahead. 7 THE WITNESS: Well, based on Publix's 8 SOMs, it does concern me that their SOMs were not 9 working appropriately from 2000s all the way 10 through to 2020. But I don't know if they're a 11 threat now because I don't know what system 12 they're utilizing. I mean, I don't know how the 13 system that they're utilizing is working. 14 BY MR. KOHLER: 15 Q. In 2019, do you believe Publix was a 16 threat to the folks in Cobb County? 17 A. I believe in 2019 that Publix was 18 operating a system, a SOM system, that was not 19 working. And because it was not working, yes, 20 the -- anytime you're operating a SOM system, you 21 become a threat. 22 Q. All right. So from 2006 to 2019, in your</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. Other than that supermarket near 2 Knoxville, have you shopped at any other Publix 3 Super Market? 4 A. No. 5 Q. What about -- have you ever gotten a 6 prescription filled at a Publix Super Market? 7 A. No. 8 Q. To your knowledge, did your daughter ever 9 have any of her prescriptions filled at that 10 Publix Super Market? 11 A. Not that I'm aware of. 12 Q. Have you ever been to a Publix 13 Super Market in Cobb County? 14 A. No, I have not. 15 Q. During your time at the DEA, did you ever 16 have any professional dealings with Publix, to 17 your recollection? 18 A. No. 19 Q. Have you ever recommended to somebody not 20 to shop at Publix? 21 A. No. 22 Q. Have you ever recommended to somebody not</p>	<p style="text-align: right;">Page 221</p> <p>1 opinion, Publix Super Market was a threat to the 2 folks in Cobb County? 3 A. My opinion was that Publix Super Market 4 was not appropriately monitoring controlled 5 substances through their SOM system, which was -- 6 opened the door for potential diversion. 7 Q. Have you ever notified anybody at the DEA 8 about your concerns relating to Publix's 9 operations in Cobb County? 10 A. No, I did not. 11 Q. Have you ever notified anybody in law 12 enforcement about your concerns relating to 13 Publix's operations in Cobb County? 14 A. No. 15 Q. Have you ever notified any regulator 16 about your concerns relating to Publix's 17 operations in Cobb County? 18 A. No. 19 Q. I believe I got this from the report. 20 While you were at the DEA, you were responsible 21 for oversight and control of all regulatory 22 compliance inspections and investigations, as well</p>

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<p style="text-align: right;">Page 222</p> <p>1 as all civil and criminal investigations of about 2 1.6 million DEA registrants; is that right? 3 A. That's correct. 4 Q. That would have included distributors, 5 correct? 6 A. Manufacturers, distributors, pharmacies, 7 doctors. Any practitioner. Researchers. Yeah. 8 Q. That would also include Publix in both 9 its capacity as a self-distributor and a 10 pharmacist; is that fair? 11 A. Yes. 12 Q. I think in your report you also said you 13 were the DEA liaison to law enforcement and 14 regulatory agencies at the federal, state, and 15 local levels, correct? 16 A. Yes. 17 Q. Was there particular years in which you 18 served as that liaison? 19 A. Yeah. From the time I took the job full 20 time in 2005 right up until the time I retired. 21 Q. And that would have been October 2015? 22 A. Yes.</p>	<p style="text-align: right;">Page 224</p> <p>1 level? 2 A. No. They were both at the state level. 3 Q. When you were wearing the liaison hat, I 4 guess during that '05 to '15 period, do you recall 5 having any personal interactions with anyone from 6 the Cobb County concerning the diversion of 7 opioids in the county? 8 A. No. 9 Q. Not the county level? 10 A. No. 11 Q. Were there any discussions, to your 12 recollection, at the state level of any concerns 13 about the opioid diversion in Cobb County? 14 Specifically Cobb County. 15 A. No. I think, at that point in time, the 16 concern was state-wide and multistate. Georgia 17 was seeing an influx of drugs coming in from 18 Florida and also people from Florida setting up 19 shop in Georgia. 20 Q. And what time -- to the best of your 21 recollection, when was the last time you had 22 meetings at the state level with folks at Georgia?</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. Did you ever have any personal 2 interactions with anyone from the State of Georgia 3 at the state level concerning the diversion of 4 opioids in the State of Georgia? 5 A. Yes, I did. 6 Q. Do you recall who that person was? 7 A. Rick Allen. 8 Q. I'm sorry? 9 A. Rick Allen. 10 Q. And which -- 11 A. Also -- 12 Q. Who's he with? 13 A. -- Vernon -- I can't think of his last 14 name now. One was with GBI. 15 Q. Mr. Allen? 16 A. No. Rick was with the Georgia Bureau of 17 Narcotics. 18 Q. Okay. And that was Mr. Allen. Do you 19 recall anybody else's name? 20 A. GBI -- Vernon. Oh, God, I can't think of 21 his name. 22 Q. Can you think of anyone else at the state</p>	<p style="text-align: right;">Page 225</p> <p>1 A. It was probably in the 2014 time frame. 2 2014 time frame. 3 Q. Do you recall any concerns expressed by 4 the State of Georgia regarding Publix's 5 operations? 6 A. No. We just discussed in general what 7 was going on. 8 Q. So nothing pertaining to Publix, correct? 9 A. That's correct. 10 Q. All right. I want to make sure I 11 understand the type of discipline a registrant can 12 face if they get sideways of the Controlled 13 Substances Act or its regulations. 14 You've got, obviously, criminal, right? 15 A. Uh-huh. 16 Q. That's a yes? 17 A. Yes. 18 Q. Civil, where the -- presumably the DEA 19 will file a civil action, right? 20 A. U.S. attorney files a civil action. 21 Q. Then administrative; is that right? 22 A. Yes.</p>

<p style="text-align: right;">Page 226</p> <p>1 Q. Different type. I think you touched on</p> <p>2 some of these earlier. You mentioned a field</p> <p>3 hearing.</p> <p>4 A. Field hearing.</p> <p>5 Q. Tell me briefly what a field hearing is.</p> <p>6 A. Well, first of all, there's letter of</p> <p>7 admonition.</p> <p>8 Q. Okay. Let's go in order. Okay. Letter</p> <p>9 of admonishment, right?</p> <p>10 A. Yeah.</p> <p>11 Q. What's next?</p> <p>12 A. Then a field hearing.</p> <p>13 Q. What's next?</p> <p>14 A. Order to show cause.</p> <p>15 Q. What's next?</p> <p>16 A. Order to show cause with an immediate</p> <p>17 suspension order attached.</p> <p>18 Q. What's next?</p> <p>19 A. There would be no next because they would</p> <p>20 not be allowed -- once that goes through, they're</p> <p>21 not allowed to practice with controlled</p> <p>22 substances.</p>	<p style="text-align: right;">Page 228</p> <p>1 pretty much in multiple states all over the</p> <p>2 country.</p> <p>3 Q. Including Florida, fair?</p> <p>4 A. Including Florida. Yes.</p> <p>5 Q. Particularly in the Lakeland area?</p> <p>6 A. Lakeland, Orlando. Yeah.</p> <p>7 Q. Particularly along the I-4 corridor.</p> <p>8 Would you agree with that?</p> <p>9 A. Yeah, I mean -- yes. 75 and I-4.</p> <p>10 Q. You would -- in 2007, the DEA suspended</p> <p>11 Cardinal Health's registration to distribute</p> <p>12 controlled substances from its Lakeland, Florida,</p> <p>13 distribution center, correct?</p> <p>14 A. Yes.</p> <p>15 Q. This suspension was based, in part,</p> <p>16 because of failures relating to its suspicious</p> <p>17 order monitoring and reporting as to opioid</p> <p>18 hydrocodone, right?</p> <p>19 A. Yes.</p> <p>20 Q. In 2007, the DEA suspended</p> <p>21 AmerisourceBergen's registration to distribute</p> <p>22 controlled substances from its Orlando</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. What about just like -- just a warning?</p> <p>2 Is that something --</p> <p>3 A. Generally --</p> <p>4 Q. -- that's below a letter of admonishment?</p> <p>5 A. Yeah, a warning would be something so</p> <p>6 minor that, you know, they just correct it on site</p> <p>7 and they just say, look, we're going to have you</p> <p>8 correct this on site.</p> <p>9 Q. Okay. And tell me briefly what a field</p> <p>10 hearing is.</p> <p>11 A. A field hearing is done where there were</p> <p>12 violations and the special agent in charge in the</p> <p>13 field actually brings the parties in, with their</p> <p>14 attorneys, and explains that -- what the</p> <p>15 violations are and asks how the violations will be</p> <p>16 corrected.</p> <p>17 Q. Would you agree that, from '05 to 2015,</p> <p>18 the DEA was particularly vigilant in investigating</p> <p>19 the distribution and dispensing practices of</p> <p>20 registrants in the State of Florida?</p> <p>21 A. The State of Florida got the most -- got</p> <p>22 the most media attention, but they were vigilant</p>	<p style="text-align: right;">Page 229</p> <p>1 distribution center due to its failures related to</p> <p>2 suspicious order monitoring and reporting as to</p> <p>3 opioid hydrocodone, right?</p> <p>4 A. Yes.</p> <p>5 Q. The DEA suspended the registration of</p> <p>6 McKesson's Lakeland, Florida, distribution center</p> <p>7 as to certain schedule II opioids, correct?</p> <p>8 A. I don't -- it wasn't schedule II; it was</p> <p>9 schedule III.</p> <p>10 Q. Okay. Do you remember what year that was</p> <p>11 with McKesson's distribution center in Lakeland?</p> <p>12 A. I don't remember if it was a surrender or</p> <p>13 a suspen- -- or a -- it had to be 2008.</p> <p>14 Q. Okay. 2012, the DEA suspended CVS</p> <p>15 Health's registration to dispense controlled</p> <p>16 substances at two pharmacies in Sanford, Florida,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And that was because of its -- the</p> <p>20 pharmacists' failures to comply with corresponding</p> <p>21 responsibility obligations as to prescription</p> <p>22 opioids, correct?</p>

<p style="text-align: right;">Page 230</p> <p>1 A. Yes.</p> <p>2 Q. In 2012, the DEA entered into a</p> <p>3 settlement with Cardinal Health relation, in part,</p> <p>4 to its failures concerning suspicious order</p> <p>5 monitoring and reporting as to prescription</p> <p>6 opioids, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And as part of that settlement, the DEA</p> <p>9 suspended Cardinal's Lakeland, Florida,</p> <p>10 distribution center registration, right?</p> <p>11 A. Yes.</p> <p>12 Q. And Cardinal, I think, paid a \$34 million</p> <p>13 fine, correct?</p> <p>14 A. That sounds correct, yes.</p> <p>15 Q. And Cardinal admitted in writing of its</p> <p>16 failures related to suspicious order monitoring</p> <p>17 and reporting, correct?</p> <p>18 MR. MIGLIORI: Objection to form.</p> <p>19 THE WITNESS: I believe that was in the</p> <p>20 memorandum. Yes.</p> <p>21 BY MR. KOHLER:</p> <p>22 Q. In 2013, the DEA entered into a</p>	<p style="text-align: right;">Page 232</p> <p>1 that. That's not -- that's why you rarely will</p> <p>2 see me on the news. It's not -- my job was to</p> <p>3 oversee the investigations. It wasn't to go on</p> <p>4 the press and do press releases.</p> <p>5 Q. You would become familiar with press</p> <p>6 releases that the DEA's office would issue, fair?</p> <p>7 A. My execs would look at the press</p> <p>8 releases, and sometimes I'd look at them, but for</p> <p>9 the most part I relied on my execs to make sure</p> <p>10 that the press releases were accurate and make</p> <p>11 sure they actually talked about what happened.</p> <p>12 Q. Okay.</p> <p>13 (Rannazzisi Deposition Exhibit 7 marked</p> <p>14 for identification and attached to the</p> <p>15 transcript.)</p> <p>16 BY MR. KOHLER:</p> <p>17 Q. I'm going to hand you Exhibit 7.</p> <p>18 This is a press release -- this is a DEA</p> <p>19 press release from June of 2013, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall -- does this -- do you</p> <p>22 recall seeing this press release before?</p>
<p style="text-align: right;">Page 231</p> <p>1 settlement agreement with Walgreens whereby</p> <p>2 Walgreens acknowledged failures to comply with</p> <p>3 suspicious order monitoring and reporting</p> <p>4 obligations and its pharmacists' failure to comply</p> <p>5 with their corresponding responsibility</p> <p>6 obligations with respect to opioid prescriptions;</p> <p>7 is that right?</p> <p>8 A. 2013?</p> <p>9 Q. Yes, sir.</p> <p>10 A. Yeah, I believe that's correct.</p> <p>11 Q. And that settlement resulted in Walgreens</p> <p>12 surrendering its registrations for its Jupiter,</p> <p>13 Florida, distribution center, correct?</p> <p>14 A. I believe that was correct. Yes.</p> <p>15 Q. And also, they had to surrender, I think,</p> <p>16 six retail pharmacy registrations in Florida as</p> <p>17 well, correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. When the DEA would issue a</p> <p>20 press release, were you involved in reviewing or</p> <p>21 approving those press releases?</p> <p>22 A. No. We have a press office that does</p>	<p style="text-align: right;">Page 233</p> <p>1 A. I'm sure at some time I saw this press</p> <p>2 release.</p> <p>3 Q. All right. I'm going to refer you to the</p> <p>4 last paragraph of the press release before we get</p> <p>5 to the appendix A. Okay?</p> <p>6 A. Okay.</p> <p>7 Q. It says, Since 2009, the DEA, along with</p> <p>8 federal, state, and local counterparts, have</p> <p>9 partnered to combat the prescription drug abuse</p> <p>10 epidemic that has plagued Florida, culminating in</p> <p>11 Operation Pill Mill Nation I and II and Operation</p> <p>12 Oxy Alley. These investigations have resulted in</p> <p>13 charges against more than 172 individuals,</p> <p>14 including 51 doctors and 54 [sic] clinic/pharmacy</p> <p>15 owners, the seizure of approximately 2.5 million</p> <p>16 dosage units of controlled substances,</p> <p>17 approximately \$16.6 million, real property and</p> <p>18 exotic cars. In addition, approximately 42</p> <p>19 doctors and 11 pharmacies have lost their DEA</p> <p>20 registrations through the issuance of immediate</p> <p>21 suspension orders. As well, approximately 192</p> <p>22 doctors and 68 pharmacies have voluntarily</p>

<p style="text-align: right;">Page 234</p> <p>1 surrendered their DEA registrations following an 2 official visit from the DEA. Lastly, the DEA also 3 taken actions against seven other Florida-based 4 distributors. 5 Did I read that correctly? 6 A. That's what it says. Yes. 7 Q. And you would agree that none of what the 8 DEA is talking about here at all involved Publix, 9 whether as a pharmacist or as a distributor, fair? 10 A. I'm trying to think about those 11 investigations, because those are three separate 12 operations. 13 I don't recall Publix being in those 14 operations. 15 Q. Okay. From 2005 until you left the DEA 16 in October of 2015, you would agree the DEA never 17 brought any criminal charges against Publix, 18 right? 19 A. Yeah, I -- 20 MR. MIGLIORI: Objection to form and 21 founding. 22 Go ahead.</p>	<p style="text-align: right;">Page 236</p> <p>1 correct? 2 A. I don't recall them ever doing that. 3 Q. The DEA, to your knowledge, never issued 4 a letter of admonishment against Publix, correct? 5 A. That, I don't know. I mean, a letter of 6 admonishment would come from the division. It 7 would not come from my office. 8 Q. But you're not aware of that ever 9 happening -- 10 A. I'm not aware of... 11 Q. During the time period where you were at 12 the DEA, the DEA never made any public allegations 13 against Publix alleging that it was in violation 14 of the Controlled Substances Act or its 15 regulations, correct? 16 MR. MIGLIORI: Objection. Foundation. 17 THE WITNESS: Could you -- 18 BY MR. KOHLER: 19 Q. I'm sorry? 20 A. Could you repeat that question? 21 Q. During the time that you were at the DEA, 22 it never made any public allegations against</p>
<p style="text-align: right;">Page 235</p> <p>1 THE WITNESS: As far as I know, they 2 never brought any administrative or civil actions 3 against -- or criminal actions against Publix. 4 BY MR. KOHLER: 5 Q. The DEA never brought any enforcement 6 actions against Publix, correct? 7 A. I'm not aware of any, no. 8 Q. And that's something that you would be 9 aware of, right, given your role during that time 10 period? 11 A. It depends. I mean, yeah, if it's like a 12 field hearing based on violations, it doesn't 13 generally get to my level. But if an order to 14 show cause was issued, it would, because I have to 15 sign the order to show cause. 16 Q. Fair enough. The DEA never issued 17 immediate suspension orders against Publix, right? 18 A. Again, I would have to sign that, and 19 that's not -- I don't recall that ever coming to 20 my office. 21 Q. And the DEA never issued orders to show 22 cause to revoke or suspend Publix's registrations,</p>	<p style="text-align: right;">Page 237</p> <p>1 Publix alleging that it was in violation of the 2 Controlled Substances Act or its regulations, 3 correct? 4 MR. MIGLIORI: Objection to foundation. 5 Go ahead. 6 THE WITNESS: I don't recall any -- 7 anything like that. 8 BY MR. KOHLER: 9 Q. The DEA didn't enter into any settlement 10 agreements with Publix relating to any alleged 11 failure to comply with the Controlled Substances 12 Act or its regulations, correct? 13 MR. MIGLIORI: Same objection. 14 THE WITNESS: Not that I'm aware of. 15 BY MR. KOHLER: 16 Q. When you -- when the DEA was pursuing 17 enforcement actions against CVS and Cardinal for 18 violating the Controlled Substances Act and its 19 regulations, to help prove the DEA's case, you 20 relied upon Publix; is that fair? 21 MR. MIGLIORI: Objection to form. 22 THE WITNESS: I -- I don't recall. I</p>

<p style="text-align: right;">Page 238</p> <p>1 know we used comparators, but I don't recall if</p> <p>2 Publix was one of them.</p> <p>3 BY MR. KOHLER:</p> <p>4 Q. And when you were using a comparator,</p> <p>5 that comparator, in your belief, was somebody that</p> <p>6 was probably in compliance with the law, and</p> <p>7 that's why you were using it as a comparator?</p> <p>8 A. No. We were looking at -- when we look</p> <p>9 at comparators, we're saying, well, here's a</p> <p>10 pharmacy -- here's three pharmacies in this</p> <p>11 neighborhood with this one pharmacy. These three</p> <p>12 pharmacies are -- are doing -- dispensing, you</p> <p>13 know, 5,000 hydrocodone tablets a month. This</p> <p>14 pharmacy is dispensing 150,000. That's how we use</p> <p>15 comparators. We're not necessarily saying these</p> <p>16 are wrong. We're showing that there's a stark</p> <p>17 difference between what these three pharmacies are</p> <p>18 dispensing and what this pharmacy is dispensing.</p> <p>19 (Rannazzisi Deposition Exhibit 8 marked</p> <p>20 for identification and attached to the</p> <p>21 transcript.)</p> <p>22</p>	<p style="text-align: right;">Page 240</p> <p>1 declaration.</p> <p>2 A. Okay.</p> <p>3 Q. And this is what you're doing here,</p> <p>4 right? You're describing -- and let's focus on</p> <p>5 store -- CVS store 5195, right?</p> <p>6 A. Yes.</p> <p>7 Q. You pointed out that there was over</p> <p>8 1.2 million dosage uses of oxycodone for a certain</p> <p>9 time period, correct?</p> <p>10 A. Okay.</p> <p>11 Q. And then you say, Additionally, in close</p> <p>12 proximity stands Publix Pharmacy 641 that's</p> <p>13 located in Sanford, Florida. And you point out</p> <p>14 that that Publix pharmacy had only purchased</p> <p>15 25,700 units of oxycodone in 2011, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you -- and this was submitted in --</p> <p>18 you know, you testified, in the case that CVS</p> <p>19 brought in the District of Columbia, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And if you look at the declaration you</p> <p>22 submitted to Cardinal, Cardinal was distributing a</p>
<p style="text-align: right;">Page 239</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. I'm going to hand you what we marked as</p> <p>3 Exhibit 8.</p> <p>4 Mr. Rannazzisi, this is the declaration</p> <p>5 that you gave with respect to the enforcement</p> <p>6 action against CVS, correct?</p> <p>7 A. Yes.</p> <p>8 MR. KOHLER: And let's go ahead and mark</p> <p>9 this one as Exhibit 9.</p> <p>10 (Rannazzisi Deposition Exhibit 9 marked</p> <p>11 for identification and attached to the</p> <p>12 transcript.)</p> <p>13 BY MR. KOHLER:</p> <p>14 Q. Exhibit 9 is the declaration you gave in</p> <p>15 support of the DEA's enforcement action against</p> <p>16 Cardinal, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Let's just -- let's take -- let's</p> <p>19 just take the CVS declaration.</p> <p>20 A. Okay.</p> <p>21 Q. We talked briefly about comparator. If</p> <p>22 you could turn to page 22, paragraph 51, of your</p>	<p style="text-align: right;">Page 241</p> <p>1 lot of these shipments to -- these orders to these</p> <p>2 CVS pharmacies, fair?</p> <p>3 A. Could you repeat that again?</p> <p>4 Q. I'm sorry. Cardinal distributed a lot of</p> <p>5 these oxycodone products to that CVS -- or to CVS,</p> <p>6 fair, during this time period?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Let's look at your Cardinal</p> <p>9 declaration. I believe that's declaration [sic]</p> <p>10 number 9; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And then -- here -- and this was</p> <p>13 submitted also to support the DEA's enforcement</p> <p>14 action against Cardinal, correct?</p> <p>15 A. Okay.</p> <p>16 Q. Is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And on paragraph 79, you again compare</p> <p>19 what we just talked about in the prior</p> <p>20 declaration -- again, comparing the CVS store of</p> <p>21 the 1.2 million dosage units, compared to the</p> <p>22 Publix pharmacy nearby. I think it was less than</p>

<p style="text-align: right;">Page 242</p> <p>1 two miles nearby, right?</p> <p>2 A. Okay.</p> <p>3 Q. Is that right?</p> <p>4 A. 1.2 million -- yeah. It's close. Close.</p> <p>5 Q. Okay. Do you recall any other time in</p> <p>6 which you held Publix up as a comparator to some</p> <p>7 other registrant which you were pursuing</p> <p>8 enforcement actions against?</p> <p>9 A. I don't recall. I mean, the comparator</p> <p>10 is just that. It's just showing stark difference</p> <p>11 in pharmacies.</p> <p>12 That one particular pharmacy, that Publix</p> <p>13 Pharmacy, was within the location area, and so we</p> <p>14 used it as a comparator.</p> <p>15 Q. And you would use it as a comparator,</p> <p>16 though, but you want to make sure that it wasn't</p> <p>17 too far -- you would look at other possible</p> <p>18 comparators, too. It wasn't just Publix you were</p> <p>19 looking at in that trade area, fair?</p> <p>20 A. We were looking at the closest pharmacies</p> <p>21 to that pharmacy.</p> <p>22 Q. But there would sometimes be multiple</p>	<p style="text-align: right;">Page 244</p> <p>1 because it makes sense to use a close -- a</p> <p>2 pharmacy in close proximity.</p> <p>3 (Rannazzisi Deposition Exhibit 10 marked</p> <p>4 for identification and attached to the</p> <p>5 transcript.)</p> <p>6 BY MR. KOHLER:</p> <p>7 Q. Okay. I'm going to hand you Exhibit 10.</p> <p>8 This is a statement that you gave to</p> <p>9 Congress in 2014, correct?</p> <p>10 A. Yes.</p> <p>11 Q. I want to kind of focus -- this was</p> <p>12 covered in part in your declarations, but I want</p> <p>13 to focus on page 6 of your statement and -- where</p> <p>14 it says, "Enforcement" there.</p> <p>15 And you explained to Congress that the</p> <p>16 DEA uncovered two types of illegal schemes used to</p> <p>17 divert controlled substances during this time</p> <p>18 period; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And controlled substances in this</p> <p>21 context, we're talking about opioids, fair?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 243</p> <p>1 pharmacies that you could use as comparators,</p> <p>2 fair?</p> <p>3 MR. MIGLIORI: Objection. Form.</p> <p>4 Foundation.</p> <p>5 Go ahead.</p> <p>6 THE WITNESS: It just demands. I mean,</p> <p>7 it depends on the location. But if that Publix</p> <p>8 was the closest pharmacy, that's what we used.</p> <p>9 You know, when we're doing comparators, we're just</p> <p>10 looking -- I don't want to do a comparator that's</p> <p>11 20 miles away because that's not fair to the</p> <p>12 defendant.</p> <p>13 BY MR. KOHLER:</p> <p>14 Q. But if you have multiple pharmacies in or</p> <p>15 around the target, you have a choice of which</p> <p>16 comparators to use, fair?</p> <p>17 A. It's in close proximity. We try and be</p> <p>18 fair. So generally, if there's two or three</p> <p>19 pharmacies, we would include two or three</p> <p>20 pharmacies. But if a Publix Pharmacy is -- or a</p> <p>21 Walgreens or whatever is within a block of the</p> <p>22 other pharmacy, that's what we're going to use</p>	<p style="text-align: right;">Page 245</p> <p>1 Q. You state here that, quote, Florida was</p> <p>2 the epicenter of many illegal operations whereby</p> <p>3 hundreds of millions of dosage units of controlled</p> <p>4 substances were diverted into the illegal --</p> <p>5 illicit marketplace across the United States,</p> <p>6 right?</p> <p>7 A. That's correct.</p> <p>8 Q. All right. The first scheme you</p> <p>9 identified was between '05 and '09, and that was</p> <p>10 the diversion of millions of -- dosage units of</p> <p>11 schedule III hydrocodone products was facilitated</p> <p>12 by rogue internet pharmacies and unscrupulous</p> <p>13 prescribers who provided prescriptions to drug</p> <p>14 seekers utilizing these sites; is that correct?</p> <p>15 A. Yeah. Schedule III hydrocodone, and</p> <p>16 there were other drugs, too --</p> <p>17 Q. All right.</p> <p>18 A. -- but we just kept it to the</p> <p>19 hydrocodone.</p> <p>20 Q. And the hydrocodone is an opioid; is that</p> <p>21 right?</p> <p>22 A. It is an opioid.</p>

<p style="text-align: right;">Page 246</p> <p>1 Q. And it was reclassified, what, in 2014?</p> <p>2 A. October of 2014 it went to a schedule II</p> <p>3 from schedule III.</p> <p>4 Q. These internet pharmacies that you</p> <p>5 mentioned, they were shut down in part because of</p> <p>6 the passage of the Ryan Haight Online Pharmacy</p> <p>7 Consumer Protection Act, correct?</p> <p>8 A. Yeah. The domestic-based pharmacies</p> <p>9 pretty much went out of business once they passed</p> <p>10 Ryan Haight.</p> <p>11 Q. You would agree that Publix did not</p> <p>12 distribute opioids to internet pharmacies, right?</p> <p>13 A. I don't recall a case where Publix was</p> <p>14 involved in an opioid scheme -- an internet</p> <p>15 scheme.</p> <p>16 Q. You -- okay. And you always understood</p> <p>17 Publix did not distribute a controlled substance</p> <p>18 to anybody but itself, right?</p> <p>19 A. Yes.</p> <p>20 Q. You would agree that Publix did not</p> <p>21 distribute hydrocodone combination products to</p> <p>22 internet pharmacies.</p>	<p style="text-align: right;">Page 248</p> <p>1 it would only be a three-day dispensing limit.</p> <p>2 And then, after they passed that law, then they</p> <p>3 said, you know what, there's no dispensing out of</p> <p>4 pain clinics.</p> <p>5 So it just depends on what year. I think</p> <p>6 that was '10 and '11. But eventually no one --</p> <p>7 there was no dispensing out of pain clinics.</p> <p>8 Q. And you would agree that the pain clinics</p> <p>9 were not relying on retail pharmacists to dispense</p> <p>10 the medication; is that fair?</p> <p>11 A. No.</p> <p>12 Q. You disagree with that?</p> <p>13 A. Yes. Some rogue doctors were just</p> <p>14 writing scripts. They would not dispense out</p> <p>15 of -- they felt that there was too much heat</p> <p>16 coming to dispensing opioids.</p> <p>17 So it depends on the clinic.</p> <p>18 Q. Okay.</p> <p>19 A. Some clinics definitely dispensed and</p> <p>20 other clinics just wrote prescriptions.</p> <p>21 Q. Are you aware of Publix dispensing any</p> <p>22 prescription that was made by these pill mills at</p>
<p style="text-align: right;">Page 247</p> <p>1 A. Again, I don't recall a case where Publix</p> <p>2 was involved. We did have cases with chain</p> <p>3 pharmacies, but Publix -- I don't recall Publix</p> <p>4 being one of them.</p> <p>5 Q. All right. So with respect to this</p> <p>6 phase -- this first phase that you're talking</p> <p>7 about to Congress, you would agree that Publix was</p> <p>8 not part of this problem that you identified in</p> <p>9 this statement; is that fair?</p> <p>10 A. I agree that I don't recall Publix being</p> <p>11 involved. Yes.</p> <p>12 Q. All right. The second scheme you talk</p> <p>13 about is the rise of the pain clinics in Florida,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And these pain clinics were dispensing</p> <p>17 oxycodone medication, right?</p> <p>18 A. Yes.</p> <p>19 Q. And they were dispensing them -- they</p> <p>20 were dispensing them, correct?</p> <p>21 A. Originally, the clinics were dispensing</p> <p>22 them. Then the State of Florida passed a law that</p>	<p style="text-align: right;">Page 249</p> <p>1 the time?</p> <p>2 MR. MIGLIORI: Objection.</p> <p>3 THE WITNESS: I don't have any</p> <p>4 information about that.</p> <p>5 BY MR. KOHLER:</p> <p>6 Q. You would agree that Publix did not</p> <p>7 operate pain clinics during this time period.</p> <p>8 A. No.</p> <p>9 Q. You wouldn't agree with that?</p> <p>10 A. I -- no, Publix was a dispenser and a</p> <p>11 distributor. I don't think -- I don't know of any</p> <p>12 information that I've reviewed that shows that</p> <p>13 they were operating a pain clinic.</p> <p>14 Q. You would agree Publix did not distribute</p> <p>15 oxycodone during this time period, right?</p> <p>16 A. I'm trying to go back. They didn't start</p> <p>17 distributing until they went to Rocket Court. So</p> <p>18 that would have been 2016. So they didn't</p> <p>19 distribute during that time period.</p> <p>20 Q. And you would agree Publix never</p> <p>21 distributed to pill mill clinics; is that fair?</p> <p>22 MR. MIGLIORI: Objection.</p>

<p style="text-align: right;">Page 250</p> <p>1 THE WITNESS: Well, Publix, at that</p> <p>2 point, prior to that point, was only distributing</p> <p>3 IIIs, IVs, and Vs, and I don't believe they</p> <p>4 distributed outside of their pharmacy base. So</p> <p>5 no.</p> <p>6 BY MR. KOHLER:</p> <p>7 Q. So you agree with me, correct?</p> <p>8 A. Yes.</p> <p>9 Q. All right. I want to talk about</p> <p>10 registrations briefly, and renewals and</p> <p>11 inspections.</p> <p>12 You would agree that you cannot</p> <p>13 distribute controlled substances without becoming</p> <p>14 registered with the DEA, correct?</p> <p>15 A. You cannot distribute? You said</p> <p>16 distribute?</p> <p>17 Q. Distribute.</p> <p>18 A. Yes. You have to be a reg- -- well --</p> <p>19 yes, that's correct.</p> <p>20 Q. All right. From start to finish, just</p> <p>21 how long does that process typically take from the</p> <p>22 application to get an approval from the DEA?</p>	<p style="text-align: right;">Page 252</p> <p>1 Q. Average time.</p> <p>2 A. There is no average time. Because if you</p> <p>3 think about it, if they go on site and their cage</p> <p>4 is wrong, they have to do a cage -- a rebuilding</p> <p>5 of the cage or a rebuilding of the vault --</p> <p>6 Q. All right.</p> <p>7 A. -- or a change. So that depends on their</p> <p>8 contractors and whether they can do it or not,</p> <p>9 because the --</p> <p>10 Q. All right. So during this time period,</p> <p>11 the DEA is doing due diligence, fair, with respect</p> <p>12 to the application, right?</p> <p>13 A. Yes.</p> <p>14 Q. And the purpose of this due diligence</p> <p>15 process is to make sure the applicant is qualified</p> <p>16 to distribute controlled substances, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you would agree that the DEA doesn't</p> <p>19 want people distributing controlled substances</p> <p>20 that may be a threat to the community, right?</p> <p>21 A. Well -- yes.</p> <p>22 Q. And you would agree that distributors</p>
<p style="text-align: right;">Page 251</p> <p>1 A. For a distributor?</p> <p>2 Q. Yes, sir.</p> <p>3 A. An initial distribution? You're talking</p> <p>4 about an initial --</p> <p>5 Q. Initial -- never distributed before.</p> <p>6 Initial distribution.</p> <p>7 A. There has to be -- well, you apply. An</p> <p>8 inspection is set up. They go through physical</p> <p>9 security. They go through recordkeeping. They</p> <p>10 have to explain what's required of them during</p> <p>11 their application. They have to sign a document</p> <p>12 saying that they will maintain effective controls</p> <p>13 against diversion as part of their registration.</p> <p>14 And once everything is -- all of the</p> <p>15 operations look good, DEA will go ahead and</p> <p>16 process their registration.</p> <p>17 Q. So soup to nuts --</p> <p>18 A. I can't --</p> <p>19 Q. -- how long?</p> <p>20 A. It just --</p> <p>21 Q. Are we talking months? Years?</p> <p>22 A. It depends. I mean --</p>	<p style="text-align: right;">Page 253</p> <p>1 will not be registered if their registration is</p> <p>2 inconsistent with the public interest, correct?</p> <p>3 A. Well -- yes.</p> <p>4 Q. During your time at the DEA from '05 to</p> <p>5 '15, did you play any part in the registration</p> <p>6 process?</p> <p>7 A. The registration -- we had a whole unit</p> <p>8 that did registrations. No.</p> <p>9 Q. Were you part of it?</p> <p>10 A. I oversaw them. Like every other section</p> <p>11 in the Office of Diversion Control, I oversaw</p> <p>12 them, but we had section chiefs that handled the</p> <p>13 sections. So we had a section chief that was</p> <p>14 over...</p> <p>15 Q. Publix was issued its first registration</p> <p>16 to distribute controlled substances in '05,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And the DEA registered Publix to</p> <p>20 distribute class III to class V controlled</p> <p>21 substances, right?</p> <p>22 A. Yes.</p>

<p style="text-align: right;">Page 254</p> <p>1 Q. And I think you answered Albertsons' 2 attorney's question earlier. 3 That registration has to be renewed 4 yearly, correct? 5 A. Yes. 6 Q. I'm assuming the DEA doesn't rubber-stamp 7 renewals, correct? Is that fair? 8 A. No, they -- they go through -- they make 9 sure that there are no active pending 10 investigations. They make sure that their state 11 licenses are up to par, that they have the state 12 licenses. 13 Q. So the DEA does undertake due diligence 14 to determine whether the registrant's registration 15 should be renewed, fair? 16 A. Yes. 17 Q. And one of the factors the DEA considers 18 in renewing a registrant's registration is its 19 history of compliance with the Controlled 20 Substances Act and its regulations, fair? 21 A. Yes. 22 Q. And during your time at the DEA, did you</p>	<p style="text-align: right;">Page 256</p> <p>1 What about a situation where a registrant 2 wants to expand the class of controlled substances 3 it distributes? Must it get permission from the 4 DEA to do so? So in Publix's case, if it -- if it 5 wasn't distributing class II, would it have to get 6 permission to distribute class II? 7 A. Well, it would have to do a physical 8 alteration of their distribution facility, because 9 class II, those have to go into a vault. So they 10 would have to basically build a vault. 11 Q. I know you didn't give a time period of 12 how long the initial registration process lasts. 13 What about when you want to expand to 14 start distributing class II? Do you have any idea 15 about how long that process typically takes? 16 A. It depends. Do they have a vault? Is 17 the vault built already? Is it compliant with the 18 CFR? There's a lot of things to be considered. 19 But, you know, if they have a vault and 20 they built it in compliance with the CFR, it 21 should go fairly quickly. 22 Q. In deciding whether to permit a</p>
<p style="text-align: right;">Page 255</p> <p>1 ever play any part in the renewal process, other 2 than overseeing some of the section folks? 3 A. I just oversaw the section. 4 Q. All right. And of course, during your 5 time at the DEA, Publix's registration to 6 distribute controlled substances was always 7 renewed, correct? 8 A. I don't have the information. I'm sure 9 it was because, according to the documents I 10 reviewed, they had an active registration. Yeah. 11 Q. If a registrant's -- if a 12 distributor's -- if a distributor's registration 13 was not renewed or the recommendation was not to 14 renew it, would that reach to your level? 15 A. Yes. 16 Q. All right. And to your knowledge, did 17 anybody ever -- at the DEA ever recommend to you 18 not to renew Publix's registration? 19 A. Not that I can recall. 20 Q. If a registrant wants to -- so we talked 21 earlier about the initial -- the initial signup to 22 be a distributor.</p>	<p style="text-align: right;">Page 257</p> <p>1 registrant to distribute schedule II controlled 2 substances, does the DEA consider the registrant's 3 history of compliance with the Controlled 4 Substances Act and its regulations? 5 A. Yeah, I think that's one of the factors 6 in 823. 7 Q. Is it more difficult to obtain a 8 registration from the DEA to distribute class II 9 controlled substances? 10 A. It's not necessarily more difficult. 11 It's just there's -- there's added requirements. 12 Okay? So is it more difficult? No. If a company 13 knows what they need to do to get the vault in 14 place, to make sure the security is in place, and 15 to know what paperwork is done, it should go 16 fairly smoothly. 17 Q. Were you -- during your time at the DEA, 18 were you involved at all, other than at the 19 overview level, of making decisions about whether 20 to allow a current registrant to expand the type 21 of controlled substances they distribute? 22 A. Unless there was a problem or there was</p>

<p style="text-align: right;">Page 258</p> <p>1 an active investigation, generally, I left that to 2 the field to make those decisions on expanding to 3 schedule II or, you know, whatever other schedule 4 they were -- 5 Q. When did the DEA approve Publix's ability 6 to distribute class II? 7 A. Well, they started distributing class II 8 in 2016, so probably around that time. 9 Q. The DEA performs routine inspections of 10 registrant distributors, correct? 11 A. Yes. 12 Q. And on average, how often do these take 13 place, these inspections? 14 A. They were generally every four to five 15 years. And somewhere during my tenure, I cut it 16 back to two to three years. 17 Q. Okay. 18 A. And it's back to five years, I think, 19 now. 20 Q. And these inspections occur at the 21 warehouse or the distribution facility, fair? 22 A. Manufacturing, distribution. Yeah.</p>	<p style="text-align: right;">Page 260</p> <p>1 part of the decisionmaking process? 2 A. No. The decisionmaking process was they 3 look at all of the SESs throughout the department 4 and then outside of the department, and based on 5 programs and what you're doing and how you're 6 doing it. 7 And I think at that point in time, I was 8 awarded because I was spearheading the 9 methamphetamine initiative, looking at chemicals 10 and things like that. 11 So I think I was granted that -- I was 12 granted that because of my work with 13 methamphetamine labs and how we're addressing 14 them. 15 Q. The inspectors that go out to inspect a 16 distributor or manufacturer, are they at all 17 financially incentivized to find violations? Are 18 they compensated in any way based upon violations 19 they find? 20 A. No. Their -- their compensation or their 21 bonuses -- they don't get bonuses. They get 22 awards. And that's based on their work</p>
<p style="text-align: right;">Page 259</p> <p>1 Q. And DEA agents perform these inspections? 2 A. Diversion investigators do. Yes. 3 Q. And they're employed by the DEA, fair? 4 A. Yes. 5 Q. And the DEA pays these inspectors? 6 A. Yes. 7 Q. Are these inspectors -- you mentioned 8 earlier that you had received some bonuses from 9 time to time while at the DEA; is that right? 10 A. Uh-huh. Yes. 11 Q. What did you have to do to earn a bonus 12 at the DEA? 13 A. It's on merit. Like -- in 2000- -- I 14 don't know. At one point in time in my career I 15 earned a presidential meritorious service award. 16 That was a bonus. It was based on my work 17 performance in the programs that I was involved in 18 at that point in time. 19 Q. Would that include how much enforcement 20 actions you brought against -- 21 A. No. 22 Q. It had nothing to do with -- that wasn't</p>	<p style="text-align: right;">Page 261</p> <p>1 performance, which means -- it has nothing to do 2 with -- it has to do with how they conduct 3 themselves professionally, if they're actually 4 doing investigations that are significant. But, I 5 mean, they're not saying, oh, we got -- we made 50 6 arrests so give me -- that's not how it works. 7 Q. The qualifications of these inspectors, 8 is it your expectation that these inspectors would 9 understand the Controlled Substances Act? 10 A. Well, they have to. They don't have a 11 choice. 12 Q. And that they would be familiar with and 13 understand the regulations with respect to the 14 Controlled Substances Act? 15 A. Yes. 16 Q. Is it the expectations of these 17 inspectors that they know and understand a 18 registrant's duties and obligations under the Act? 19 A. Yes. 20 Q. On average, how often -- how long do 21 these typical inspections last? 22 A. Depends on the size of the distributor or</p>

<p style="text-align: right;">Page 262</p> <p>1 the manufacturer. If you're a small distributor, 2 it could go fairly quickly, maybe three, four, 3 five days. If you're a large distributor with a 4 huge customer base, it's going to go a lot longer. 5 Q. And you would agree that the purpose of 6 these inspections is to make sure the registrant 7 is complying with the Controlled Substances Act 8 and its regulations; is that fair? 9 A. I think the purpose is to ensure that the 10 security provisions are -- the provisions within 11 the Act are being followed. 12 Q. If the -- is it your expectation that if 13 the inspector identifies any concerns relating to 14 the registrant's operations, then that would be 15 something that would be documented? 16 A. If there's findings, it's generally 17 documented. Yes. 18 Q. Well, was that your expectation, that 19 they would, in fact, be documented if they found 20 anything wrong during their inspection? 21 A. Well, yeah. That's what the DEA 6 is 22 for. So yes.</p>	<p style="text-align: right;">Page 264</p> <p>1 fair? 2 A. No. 3 Q. All right. That data includes name of a 4 pharmacy? 5 A. What, the ARCOS data? 6 Q. Yes, sir. 7 A. ARCOS data, yeah, name of -- 8 Q. It includes the DEA number associated 9 with that pharmacy? 10 A. Yes. 11 Q. Each location that -- that pharmacy 12 location? 13 A. Yes. 14 Q. And if you're a chain, you've got 15 multiple locations, in that case, you would have 16 multiple DEA numbers, correct? 17 A. Yes. 18 Q. It identifies whether it's a retail or a 19 chain pharmacy; is that right? 20 A. Yes. 21 Q. Provides information related to dosage 22 units of opioid drugs shipped to the pharmacy?</p>
<p style="text-align: right;">Page 263</p> <p>1 Q. And that would be -- not necessarily even 2 a violation. If they had any concerns arising out 3 of their inspection, that those concerns would be 4 documented, not necessarily something rising to 5 the level of a violation. 6 Would you agree with that? 7 A. Well, it just depends on who's drafting 8 the 6, because I've seen things where they've said 9 we made onsite corrections; they were minor 10 corrections which we made onsite. That's in the 11 report. 12 Sometimes violations are identified in 13 the report that require more than an onsite 14 inspection. It just depends, so... 15 Q. Prior to doing an onsite inspection, that 16 inspector has access to ARCOS data, correct? 17 A. Yes. 18 Q. And that data gives the DEA visibility 19 into a distributor's distribution practices, fair? 20 A. Yes. 21 Q. That also -- that ARCOS data also gives 22 the DEA visibility into dispensing practices,</p>	<p style="text-align: right;">Page 265</p> <p>1 A. Yes. 2 Q. Provides the total weight of the dosage 3 units, fair? In milligrams. 4 A. I know where you're going with the total 5 weight, but it's depending on how you're pulling 6 the ARCOS data -- 7 Q. But that's stuff that's available in the 8 ARCOS data, right? 9 A. Yeah, total weight. But generally 10 they're looking at dosage units and they're 11 looking at drug strength. 12 Q. It also includes the MME? 13 A. It can. 14 Q. This was all information that was 15 available to the inspector prior to going out to 16 inspect a distribution center, fair? 17 A. Yeah, but it definitely was not current. 18 So, remember, ARCOS is generally -- could be as 19 much as six months behind. So if they're doing an 20 inspection today, they're looking at data that's 21 fairly old. 22 Q. You consider six months old?</p>

<p style="text-align: right;">Page 266</p> <p>1 A. Yeah.</p> <p>2 Q. Okay. When you were looking at ARCOS</p> <p>3 data, you were looking at it from, what, 2006 to</p> <p>4 2014 and then 2014, what, to '19?</p> <p>5 A. That's -- I was looking at the full</p> <p>6 range.</p> <p>7 Q. Right.</p> <p>8 A. Whatever was provided by SLCG I was</p> <p>9 looking at. But remember, when they're going out</p> <p>10 on inspection, they don't have that realtime data,</p> <p>11 because ARCOS is always behind. So you have to --</p> <p>12 Q. But they still have access to data,</p> <p>13 right?</p> <p>14 A. Yeah, they have access to --</p> <p>15 Q. They have access --</p> <p>16 A. -- data.</p> <p>17 Q. -- to the ARCOS data, correct?</p> <p>18 A. From six months ago, yes.</p> <p>19 Q. Okay. So -- but they still have access</p> <p>20 to it, correct?</p> <p>21 A. Yes.</p> <p>22 Q. All right. The inspector would also have</p>	<p style="text-align: right;">Page 268</p> <p>1 A. Are there consequences? Well, it depends</p> <p>2 on what information. Of course there's going to</p> <p>3 be consequences. They're going to say, why can't</p> <p>4 you provide it?</p> <p>5 Q. The registrant has a duty to cooperate</p> <p>6 with the inspector, fair?</p> <p>7 A. Under notice of inspection, yes, they do.</p> <p>8 Q. And part of that duty to cooperate is if</p> <p>9 the inspector wants information, the inspector is</p> <p>10 entitled to that information, correct?</p> <p>11 A. He's entitled to it if it's part of the</p> <p>12 recordkeeping or security provisions of the</p> <p>13 Controlled Substances Act.</p> <p>14 Q. And so you would agree that there are</p> <p>15 consequences to the registrant if they don't</p> <p>16 provide information requested by the inspector,</p> <p>17 fair?</p> <p>18 A. Yes.</p> <p>19 Q. You would agree that there are</p> <p>20 consequences if the registrant provides inaccurate</p> <p>21 information to the inspector, fair?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 267</p> <p>1 access to any suspicious order reports that have</p> <p>2 been filed by the distributor, too, right?</p> <p>3 A. If the suspicious order report was filed</p> <p>4 with that particular office that's doing the</p> <p>5 inspection, yes.</p> <p>6 Q. And they would also be aware if no</p> <p>7 suspicious order reports were filed with that</p> <p>8 office, right?</p> <p>9 A. That is correct.</p> <p>10 Q. And the purpose of these inspections is</p> <p>11 ultimately to protect the community to prevent the</p> <p>12 diversion of controlled substances, right?</p> <p>13 A. It's to identify violations that could</p> <p>14 create instances of diversion.</p> <p>15 Q. If the inspector needs additional</p> <p>16 information from the registrant, the inspector can</p> <p>17 simply ask for it, right?</p> <p>18 A. Yes. During the daily reviews or</p> <p>19 closeout. Yes.</p> <p>20 Q. And are there are consequences if the</p> <p>21 registrant refuses to provide the inspector</p> <p>22 additional information?</p>	<p style="text-align: right;">Page 269</p> <p>1 Q. And you would agree that there are</p> <p>2 consequences if the registrant provides</p> <p>3 purposefully false information to the inspector,</p> <p>4 fair?</p> <p>5 A. Yes.</p> <p>6 Q. You would agree -- you mentioned, I</p> <p>7 think, a DEA form 6 earlier. Was it a 6 form? Is</p> <p>8 that the ROI?</p> <p>9 A. Yes.</p> <p>10 Q. You would agree that the inspector,</p> <p>11 before going out to perform his or her inspection,</p> <p>12 that they would also have access to prior ROIs, to</p> <p>13 the extent one was done, fair?</p> <p>14 A. Yes.</p> <p>15 Q. And after the inspector completes the</p> <p>16 inspection, the inspection [sic] would prepare the</p> <p>17 report, right?</p> <p>18 A. Yes.</p> <p>19 Q. And the purpose of this report was to</p> <p>20 document his or her findings, right?</p> <p>21 A. Yes.</p> <p>22 Q. Who -- when this -- and the -- when this</p>

<p style="text-align: right;">Page 270</p> <p>1 was drafted up, who had access to this report?</p> <p>2 A. At -- the cyclical inspection report?</p> <p>3 Q. Yes, sir.</p> <p>4 A. The investigators, the groups -- any of</p> <p>5 the investigators in the office, the group</p> <p>6 supervisor, all the way up to the SAC.</p> <p>7 Q. And if you wanted access to it, you could</p> <p>8 get access to an ROI, correct?</p> <p>9 A. I'm sure I could. I would just call</p> <p>10 somebody and say, send me the ROI.</p> <p>11 Q. But people outside the DEA did not have</p> <p>12 access to these reports, fair?</p> <p>13 A. No.</p> <p>14 Q. These reports were authored not for any</p> <p>15 audience outside the DEA, fair?</p> <p>16 A. They're investigative reports. They're</p> <p>17 for the U.S. attorney, if need be, and DEA.</p> <p>18 That's it.</p> <p>19 Q. And again, these reports would document</p> <p>20 any violations they found with respect to their</p> <p>21 inspection, correct?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 272</p> <p>1 inspection.</p> <p>2 Q. No. I'm talking after -- after they</p> <p>3 start distributing, there would be these onsite</p> <p>4 inspections that occur, correct?</p> <p>5 A. The cyclical? Yes.</p> <p>6 Q. Yes, sir, that's what I'm --</p> <p>7 A. Uh-huh.</p> <p>8 Q. While you were at the DEA from '05 to</p> <p>9 '15, were you aware of Publix committing any</p> <p>10 recordkeeping violations?</p> <p>11 A. Again, unless it came to an order to show</p> <p>12 cause, I wouldn't see it unless I specifically</p> <p>13 asked for it.</p> <p>14 Q. So the question was, during the time</p> <p>15 period in which you were at the DEA, were you ever</p> <p>16 aware of Publix committing any recordkeeping</p> <p>17 violations?</p> <p>18 MR. MIGLIORI: Asked and answered.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: I don't recall because I</p> <p>21 wouldn't have seen the recordkeeping violations</p> <p>22 unless it rose to an order to show cause. And I</p>
<p style="text-align: right;">Page 271</p> <p>1 Q. If there were any concerns about a report</p> <p>2 or something covered in a report, would you expect</p> <p>3 that those violations or concerns would be</p> <p>4 addressed with the registrant or the appropriate</p> <p>5 authorities?</p> <p>6 A. Well, part of the inspection process is</p> <p>7 to explain what the violations were and what</p> <p>8 course of action would be taken.</p> <p>9 Q. Are you aware of the DEA conducting these</p> <p>10 routine inspections of Publix's distribution</p> <p>11 warehouse while you were at the DEA?</p> <p>12 A. Well, any inspection that was done while</p> <p>13 I was at DEA was done under my supervision. So</p> <p>14 that's just the way it is. I can't tell you every</p> <p>15 inspection that was done, because they do quite a</p> <p>16 few.</p> <p>17 Q. So if -- your expectation would be if</p> <p>18 Publix started distributing controlled substances</p> <p>19 in 2005, that there would certainly be several</p> <p>20 onsite inspections that would occur during your</p> <p>21 time period at the DEA.</p> <p>22 A. They have to do a pre-registrant</p>	<p style="text-align: right;">Page 273</p> <p>1 don't recall any orders to show cause.</p> <p>2 BY MR. KOHLER:</p> <p>3 Q. What about with respect to reporting</p> <p>4 ARCOS data to the DEA? Did Publix commit any</p> <p>5 violations with respect to that while you were at</p> <p>6 the DEA?</p> <p>7 A. Unless it was -- reached the level of</p> <p>8 order to show cause, I wouldn't know that.</p> <p>9 Q. What about any physical security</p> <p>10 violations? Did Publix commit any of those while</p> <p>11 you were at the DEA?</p> <p>12 A. Again, unless it rose to the level of an</p> <p>13 order to show cause, I would not know that. It</p> <p>14 would be at the special agent in charge --</p> <p>15 assistant special agent in charge or diversion</p> <p>16 program manager level.</p> <p>17 Q. Did you review any of the reports of</p> <p>18 investigation concerning Publix in preparing your</p> <p>19 report?</p> <p>20 A. I believe I did.</p> <p>21 Q. How many did you review?</p> <p>22 A. I don't recall.</p>

<p style="text-align: right;">Page 274</p> <p>1 Q. Do you know which one you reviewed?</p> <p>2 A. I reviewed at least one, maybe two</p> <p>3 cyclical.</p> <p>4 Q. And what was your purpose of reviewing</p> <p>5 those one or two --</p> <p>6 A. Because I just wanted to see what was in</p> <p>7 there, what they did and who did it and...</p> <p>8 Q. Did anything stand out about what was in</p> <p>9 those one or two reports you looked at?</p> <p>10 A. No. They were pretty standard reports.</p> <p>11 Q. Are you aware of any reports of</p> <p>12 investigation concerning Publix raising any</p> <p>13 concerns about Publix's SOM system not complying</p> <p>14 with the Act or its regulations?</p> <p>15 A. No. As I previously testified, the</p> <p>16 investigators rely on the company to tell them</p> <p>17 what they're doing, how they're performing. They</p> <p>18 rely on -- they sit down and they say, so explain</p> <p>19 how your SOM works. They have to do it that way</p> <p>20 because they don't have this unbelievable amount</p> <p>21 of time to go through. Because to do a SOM</p> <p>22 appropriately, to inspect a SOM, they would have</p>	<p style="text-align: right;">Page 276</p> <p>1 MR. MIGLIORI: Objection. Argumentative.</p> <p>2 THE WITNESS: -- that not an --</p> <p>3 MR. MIGLIORI: Stop, stop, stop. Both of</p> <p>4 you, give me a chance. Okay?</p> <p>5 THE WITNESS: I apologize.</p> <p>6 MR. MIGLIORI: Let's ratchet it down.</p> <p>7 Objection. Form. Argumentative.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: No, I couldn't.</p> <p>10 BY MR. KOHLER:</p> <p>11 Q. Okay.</p> <p>12 A. Because we didn't have that kind of</p> <p>13 resource allocation. I --</p> <p>14 Q. You could have asked for additional</p> <p>15 resources, right?</p> <p>16 A. I did. They just weren't available.</p> <p>17 Congress -- we always ask for additional</p> <p>18 resources. We couldn't possibly do what we were</p> <p>19 doing and add more steps to the inspection process</p> <p>20 unless we had more people. And that wasn't</p> <p>21 available.</p> <p>22 Q. The one or two ROIs that you -- what are</p>
<p style="text-align: right;">Page 275</p> <p>1 to be there and watch it work, which means they're</p> <p>2 going to have to be there to watch a threshold</p> <p>3 breach or a frequency anomaly or substantial</p> <p>4 deviation.</p> <p>5 Q. And they could do that, right?</p> <p>6 A. Only if they're there for a month</p> <p>7 because --</p> <p>8 Q. But they can do that, right? If they</p> <p>9 wanted to do that, they could have done that,</p> <p>10 right?</p> <p>11 A. No, they couldn't, because they didn't</p> <p>12 have the time. Because these inspectors are going</p> <p>13 from one inspection, clean it, go to the next</p> <p>14 one --</p> <p>15 Q. But you could have told them, I want --</p> <p>16 park your rear end in Publix and sit there for as</p> <p>17 long as it takes and tell me about this SOM</p> <p>18 system, right?</p> <p>19 MR. MIGLIORI: Objection. Argumentative.</p> <p>20 BY MR. KOHLER:</p> <p>21 Q. You could have done that, right?</p> <p>22 A. No, because --</p>	<p style="text-align: right;">Page 277</p> <p>1 you referring to? 6 or --</p> <p>2 A. DEA 6.</p> <p>3 Q. DEA 6?</p> <p>4 A. Yeah.</p> <p>5 Q. Okay. The one or two you looked at, did</p> <p>6 any of them raise any concerns about Publix's SOM</p> <p>7 system?</p> <p>8 A. I don't believe they did. I mean, that</p> <p>9 was a while ago.</p> <p>10 Q. Do you know Linda Stocum?</p> <p>11 A. Slokum [sic]? I've heard that name.</p> <p>12 Yes.</p> <p>13 Q. Do you know Randy Rine?</p> <p>14 A. I've heard that name, too.</p> <p>15 Q. What about James Graumlich?</p> <p>16 A. No.</p> <p>17 Q. Susan Slyker?</p> <p>18 A. I know Sue Slyker, yes.</p> <p>19 Q. Deborah George?</p> <p>20 A. I know Deborah George.</p> <p>21 Q. Roshaun McElhenny, M-c-E-l-h-e-n-n-y?</p> <p>22 A. No.</p>

<p style="text-align: right;">Page 278</p> <p>1 Q. Richard Albert?</p> <p>2 A. No.</p> <p>3 Q. What about Susan Langston?</p> <p>4 A. I know Susan Langston.</p> <p>5 Q. Do you find Susan Langston credible?</p> <p>6 A. Yes. Susan Langston worked for me.</p> <p>7 Q. Do you find her honest?</p> <p>8 A. Yes.</p> <p>9 Q. Do you find her well trained?</p> <p>10 A. Yes.</p> <p>11 Q. What about the other people? Have you</p> <p>12 formed any opinions about their trustworthiness or</p> <p>13 their work ethic, their ability to know the CSA</p> <p>14 and its regulations?</p> <p>15 MR. MIGLIORI: Objection to form. Vague.</p> <p>16 Overly broad.</p> <p>17 Go ahead.</p> <p>18 THE WITNESS: The employees that I do</p> <p>19 know, they're competent employees. Yes.</p> <p>20 BY MR. KOHLER:</p> <p>21 Q. Anybody on that list of folks I gave you</p> <p>22 that you have concerns about their ability to</p>	<p style="text-align: right;">Page 280</p> <p>1 You're aware you're still under oath, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. We talked -- I was using maybe an</p> <p>4 incorrect word. I was referring to some of these</p> <p>5 DEA inspectors. Is that their true title? The</p> <p>6 people that are going out to the distribution</p> <p>7 centers to perform these inspections, what's their</p> <p>8 actual title?</p> <p>9 A. They're diversion investigators.</p> <p>10 Q. Okay. We talked about ROIs, what you</p> <p>11 call --</p> <p>12 A. DEA 6.</p> <p>13 Q. DEA 6. I'm going to go through some of</p> <p>14 these. Okay?</p> <p>15 A. Okay.</p> <p>16 (Rannazzisi Deposition Exhibit 11 marked</p> <p>17 for identification and attached to the</p> <p>18 transcript.)</p> <p>19 BY MR. KOHLER:</p> <p>20 Q. I'm going to show you what we marked as</p> <p>21 Exhibit 11.</p> <p>22 And you would agree that this is a DEA 6,</p>
<p style="text-align: right;">Page 279</p> <p>1 carry out their jobs as DEA agents?</p> <p>2 A. No.</p> <p>3 Q. In fact, your expectation would be that</p> <p>4 these folks would know the Controlled Substances</p> <p>5 Act and its regulations, correct?</p> <p>6 A. Yes.</p> <p>7 MR. KOHLER: Do we need to take a break?</p> <p>8 MR. MIGLIORI: I wouldn't mind a</p> <p>9 five-minute break.</p> <p>10 MR. KOHLER: I'm sorry. I didn't</p> <p>11 realize --</p> <p>12 THE WITNESS: No, that's all right.</p> <p>13 MR. KOHLER: We'll take a five-minute</p> <p>14 break.</p> <p>15 VIDEO TECHNICIAN: The time is 2:34 p.m.</p> <p>16 This ends unit 4. We're off the record.</p> <p>17 (A recess was taken.)</p> <p>18 VIDEO TECHNICIAN: The time is 2:44 p.m.</p> <p>19 This begins unit number 5. We're on the record.</p> <p>20 MR. KOHLER: Thank you.</p> <p>21 BY MR. KOHLER:</p> <p>22 Q. Mr. Rannazzisi, we took a short break.</p>	<p style="text-align: right;">Page 281</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And this is -- this involves Publix. It</p> <p>4 was prepared in 2008. And this is after it</p> <p>5 started -- this is kind of their first one after</p> <p>6 it started distributing controlled substances,</p> <p>7 fair?</p> <p>8 MR. MIGLIORI: Objection. Foundation.</p> <p>9 Go ahead.</p> <p>10 Are you representing that or is that</p> <p>11 self-evident?</p> <p>12 MR. KOHLER: It's from --</p> <p>13 MR. MIGLIORI: I don't care. I just want</p> <p>14 the record --</p> <p>15 MR. KOHLER: It's from September of '08.</p> <p>16 I think we started in December of 2015.</p> <p>17 THE WITNESS: '5.</p> <p>18 MR. KOHLER: I'm sorry, 2005.</p> <p>19 THE WITNESS: Yeah.</p> <p>20 BY MR. KOHLER:</p> <p>21 Q. Do you recall looking at this ROI in</p> <p>22 preparing your report?</p>

<p style="text-align: right;">Page 282</p> <p>1 A. I -- I probably -- yeah, I'm -- every ROI</p> <p>2 that was -- I looked at. So...</p> <p>3 Q. Do you recall seeing this particular one?</p> <p>4 A. I don't recall -- I mean, I looked at the</p> <p>5 ROIs. So...</p> <p>6 Q. Publix wasn't cited for any recordkeeping</p> <p>7 or security violations, correct?</p> <p>8 A. No.</p> <p>9 Q. And the case was closed, correct?</p> <p>10 A. Yeah, I -- I guess it was --</p> <p>11 Q. Well, it says it on the first page,</p> <p>12 right? It says, Since no further action is</p> <p>13 anticipated, this case is closed, right?</p> <p>14 A. Okay. Yes.</p> <p>15 Q. Okay. If you go to page 15 of the</p> <p>16 report, subsection (f), it talks about suspicious</p> <p>17 orders, right?</p> <p>18 A. Yes.</p> <p>19 Q. So in this situation, you would agree</p> <p>20 that the DEA is trying to understand how we handle</p> <p>21 suspicious orders, fair?</p> <p>22 A. That's -- yes. They were -- he -- the</p>	<p style="text-align: right;">Page 284</p> <p>1 company says. So I have no idea what the company</p> <p>2 told them.</p> <p>3 Q. Okay. But again, my question is, they</p> <p>4 didn't document any concerns they had with</p> <p>5 Publix's SOM system in 2008, right?</p> <p>6 A. According to this, no.</p> <p>7 Q. All right. Let's go to the -- page 16.</p> <p>8 It's titled, "Intelligence." And it says, The</p> <p>9 investigation disclosed no information concerning</p> <p>10 street use of legitimately manufactured controlled</p> <p>11 substances. The firm sells only to Publix stores,</p> <p>12 but does not have an excessive order reporting</p> <p>13 system -- but does have an excessive order</p> <p>14 reporting system whereby a printout is sent to the</p> <p>15 Orlando district office for all orders deviating</p> <p>16 by a certain percentage from normal ordering</p> <p>17 patterns.</p> <p>18 Okay? So when the investigator says this</p> <p>19 investigation disclosed no information concerning</p> <p>20 street use of legitimately manufactured controlled</p> <p>21 substances, what does that mean?</p> <p>22 A. I -- I guess they found that there was no</p>
<p style="text-align: right;">Page 283</p> <p>1 investigator, the diversion investigator, it</p> <p>2 appears he asked about their suspicious order</p> <p>3 system.</p> <p>4 Q. All right. And so -- and this is</p> <p>5 documented in the -- in this ROI, right?</p> <p>6 A. Yes.</p> <p>7 Q. And what's -- based upon this</p> <p>8 description, is that what you understand to be the</p> <p>9 PIM system? Is that fair?</p> <p>10 A. Publix inventory management system, yeah.</p> <p>11 Q. Okay. And you would agree that there's</p> <p>12 nothing about this description that at least this</p> <p>13 inspector wrote in here that gave any pause or</p> <p>14 concerns about the system, fair?</p> <p>15 A. The problem is we don't know exactly what</p> <p>16 they reviewed. Did they review the hard copy or</p> <p>17 did they just take the description of the system</p> <p>18 from Mr. Bamberger?</p> <p>19 Q. Okay. Regardless of what they reviewed,</p> <p>20 they didn't note any concerns about Publix's</p> <p>21 system here, correct?</p> <p>22 A. Because, generally, they go with what the</p>	<p style="text-align: right;">Page 285</p> <p>1 street use of legitimately manufactured controlled</p> <p>2 substances --</p> <p>3 Q. You would --</p> <p>4 A. -- related to Publix. But --</p> <p>5 Q. You would agree that the DEA diversion</p> <p>6 investigator has found that there's been no</p> <p>7 diversion of Publix's controlled substances.</p> <p>8 A. No. What this is saying -- remember,</p> <p>9 they're talking about excessive order reporting</p> <p>10 now, not suspicious order reporting. There's a</p> <p>11 major difference. An excessive order is not</p> <p>12 recognized anywhere in the statute of regulations,</p> <p>13 but a suspicious order is.</p> <p>14 Q. Do you see the next -- where it says</p> <p>15 "indexing" on the bottom of that page? Do you see</p> <p>16 where it's redacted?</p> <p>17 A. Indexing? Yes.</p> <p>18 Q. Yeah. What is -- I'm not asking what's</p> <p>19 here, but what's typically -- what does indexing</p> <p>20 mean for purposes of this inspection? What are</p> <p>21 they documenting there?</p> <p>22 A. What they're documenting? It could be</p>

<p style="text-align: right;">Page 286</p> <p>1 any number of things. But who was at the 2 inspection during that point in time, who they 3 were dealing with at the company, you know, who -- 4 yeah, I mean, the employees they interviewed, 5 things like that. 6 Q. All right. Let's -- I'll show you 7 another ROI. Okay? 8 A. Okay. 9 (Rannazzisi Deposition Exhibit 12 marked 10 for identification and attached to the 11 transcript.) 12 BY MR. KOHLER: 13 Q. Number 12 -- Exhibit 12. And this is one 14 couple of years later, right? From 2011, right? 15 A. Okay. 16 Q. Don't disagree with that, correct? 17 A. Yes. 18 Q. Okay. This says the onsite investigation 19 took place from August 1 to September 29th of 20 2011. 21 So they were onsite for nearly two full 22 months?</p>	<p style="text-align: right;">Page 288</p> <p>1 one investigation. So -- 2 Q. All right. So -- again, this case was 3 closed out, right? 4 A. Okay. 5 Q. When you say "okay," you agree with me, 6 right? 7 A. Yes. 8 Q. All right. No violations found with this 9 investigation, fair? 10 A. It doesn't appear that there were 11 violations. Yes. 12 Q. If you go to page 16 of 20, again, due 13 diligence suspicious orders comes up again during 14 this investigation, right? 15 Subsection (f). Do you see that, 16 Mr. Rannazzisi? 17 A. Yes. 18 Q. All right. So again, this is -- the -- 19 Publix's SOM system is being specifically talked 20 about at this investigation, correct? 21 A. Yes. 22 Q. And again, they're describing the PIM</p>
<p style="text-align: right;">Page 287</p> <p>1 A. That could be. It might have -- they 2 might have done a period of time and then they had 3 to leave and then they took up the investigation 4 after they came -- there's any number of reasons 5 why that happens. 6 Q. But this certainly suggests to the reader 7 that the investigation took place from August 1 to 8 September 29th, right? 9 A. Well, that's what it says, but, again, it 10 could be that there was a break in the 11 investigation for some reason and then they came 12 back and finished it. 13 Q. All right. Well, you would agree if 14 there was a break in the investigation, maybe they 15 would do an ROI or a DEA 6 form and then, when 16 they picked it back up, they would do together one 17 and then, if they picked it back up again, they 18 would do another one; isn't that typically how 19 they handle it? 20 A. No. 21 Q. Okay. 22 A. Because the investigation is encompassing</p>	<p style="text-align: right;">Page 289</p> <p>1 system. 2 A. Uh-huh. 3 Q. Is that right? 4 A. Yes. 5 Q. All right. Let's go to the next one. 6 I'm going to hand you Number 13 -- 7 A. Could I just hold on one second? 8 Q. Yeah. Yeah. 9 A. I just want to read this. 10 Q. What sparked your interest? Which 11 paragraph? 12 A. The next page, 17. That's -- I'm pretty 13 sure that that's not what happens. 14 Q. What are you referring to? 15 A. Is programmed to establish a maximum 16 order quantity based on the store's order history. 17 If a suspicious order is received, it is flagged 18 by the computer system and sent to the manager for 19 review. The manager contacts the store to 20 ascertain the reason for the order and either 21 approves or denies the order. 22 Q. You don't believe that's what happens?</p>

<p style="text-align: right;">Page 290</p> <p>1 A. No.</p> <p>2 Q. All right. Did you note that in your</p> <p>3 report, that there appears to be a discrepancy</p> <p>4 between what's reported by the DEA diversion</p> <p>5 investigator and what you found?</p> <p>6 A. No, because they were not afforded the</p> <p>7 opportunity to have the documents that I had.</p> <p>8 They did not have any of your internal memos.</p> <p>9 They did not have any of your e-mails. They</p> <p>10 didn't have any of your depositions. They didn't</p> <p>11 have any of that. All they had was Mr. Bamberger</p> <p>12 sitting there and telling them, well, this is what</p> <p>13 our system does.</p> <p>14 Q. They could have talked to a pharmacist</p> <p>15 manager, could they not?</p> <p>16 A. If they were made available.</p> <p>17 Q. They could have talked to a pharmacist,</p> <p>18 right? They could have asked for e-mails, right?</p> <p>19 A. Generally, if they ask for e-mails, they</p> <p>20 would have to issue a subpoena, and there's no</p> <p>21 reason to if the person onsite says, this is how</p> <p>22 we do it --</p>	<p style="text-align: right;">Page 292</p> <p>1 later. This is now July of 2015, correct?</p> <p>2 A. Yes.</p> <p>3 MR. MIGLIORI: Are these all the same</p> <p>4 facility? Or are these different --</p> <p>5 MR. KOHLER: We only have one facility.</p> <p>6 THE WITNESS: Yeah. Well, they have --</p> <p>7 MR. MIGLIORI: So the answer --</p> <p>8 THE WITNESS: -- two, but only one was</p> <p>9 operating during that time period.</p> <p>10 BY MR. KOHLER:</p> <p>11 Q. The -- and so here, this was a two-day</p> <p>12 investigation, right? They noted -- it started on</p> <p>13 the 14th and ended on the 15th?</p> <p>14 A. Correct.</p> <p>15 Q. And it notes here the investigation</p> <p>16 pending -- this investigation is pending, meaning</p> <p>17 it's ongoing, right? Pending the receipt of</p> <p>18 additional information regarding our system to</p> <p>19 detect and report suspicious orders, to include an</p> <p>20 outline of the firm's process and the specific</p> <p>21 person/department responsible for determining</p> <p>22 suspicious orders, correct?</p>
<p style="text-align: right;">Page 291</p> <p>1 Q. And you would agree that it is a problem</p> <p>2 if somebody from Publix misrepresents something to</p> <p>3 the DEA diversion inspector, right?</p> <p>4 A. Oh, absolutely.</p> <p>5 Q. That's a big problem, right?</p> <p>6 A. Yes, it is.</p> <p>7 Q. And you would agree that that person is</p> <p>8 motivated to make sure that they're not -- that</p> <p>9 they're telling the truth, right?</p> <p>10 A. Well, it would be very difficult for me</p> <p>11 to understand during -- why a company would not</p> <p>12 explain exactly what they were doing if asked</p> <p>13 during an inspection. Yes.</p> <p>14 (Rannazzisi Deposition Exhibit 13 marked</p> <p>15 for identification and attached to the</p> <p>16 transcript.)</p> <p>17 BY MR. KOHLER:</p> <p>18 Q. I've handed you what we've marked as --</p> <p>19 I'm sorry, can you tell me that?</p> <p>20 A. 13.</p> <p>21 Q. 13.</p> <p>22 So let's fast-forward a couple years</p>	<p style="text-align: right;">Page 293</p> <p>1 A. Yes.</p> <p>2 Q. Okay. If you go to page 10 of 15, the</p> <p>3 diversion investigator here is talking about their</p> <p>4 findings with respect to our -- our system,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. If you go to page 15, where it talks</p> <p>8 about special assignments, it says, This case is</p> <p>9 currently pending in [sic] the Orlando district</p> <p>10 office review. And that would be district that</p> <p>11 Publix would report to, correct?</p> <p>12 A. Yeah. Can I read this paragraph real</p> <p>13 quick?</p> <p>14 Q. Well --</p> <p>15 MR. MIGLIORI: If you need to read</p> <p>16 something, you read it. But he's got a question</p> <p>17 pending, so let him ask the question and then you</p> <p>18 can take whatever time you need.</p> <p>19 BY MR. KOHLER:</p> <p>20 Q. The -- let me back up.</p> <p>21 Did you review this particular ROI in</p> <p>22 preparing your report?</p>

<p style="text-align: right;">Page 294</p> <p>1 A. I believe I did review this one.</p> <p>2 Q. And so if there's anything remarkable</p> <p>3 about this ROI, you would have put it in your</p> <p>4 report, fair?</p> <p>5 MR. MIGLIORI: Objection. It's listed in</p> <p>6 his reliance materials.</p> <p>7 THE WITNESS: Yeah, it's -- I don't</p> <p>8 recall if there was anything remarkable in it</p> <p>9 because I used to read these all the time, but --</p> <p>10 BY MR. KOHLER:</p> <p>11 Q. But if you're preparing your report --</p> <p>12 A. Yeah.</p> <p>13 Q. -- and you're finding something that you</p> <p>14 believe is materially different than what your</p> <p>15 investigator -- your diversion investigator is</p> <p>16 putting, would that not be something you would</p> <p>17 want to put in your report?</p> <p>18 A. No, because the investigator was not</p> <p>19 afforded the information that I was afforded. He</p> <p>20 didn't get to look at a deposition. He didn't get</p> <p>21 to see what the employees were saying about their</p> <p>22 system. He didn't get any internal e-mails. He</p>	<p style="text-align: right;">Page 296</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. What are you referring to? What page is</p> <p>3 that?</p> <p>4 A. This is page 10, during the inspection.</p> <p>5 Q. Okay.</p> <p>6 A. Okay.</p> <p>7 Q. You would agree that Mr. Hewell advised</p> <p>8 that he was aware of the DEA requirements</p> <p>9 regarding the reporting of suspicious orders and</p> <p>10 confirmed that Publix has not reported any</p> <p>11 suspicious orders to the DEA, right?</p> <p>12 You know who Mr. Hewell is, right?</p> <p>13 A. Of course I do.</p> <p>14 Q. And so the DEA certainly knows in 2015</p> <p>15 that Publix hadn't made a single suspicious order</p> <p>16 report to that office, correct?</p> <p>17 A. That's right.</p> <p>18 Q. All right.</p> <p>19 A. It also says that the firm maintains a</p> <p>20 history of any and all threshold adjustments to</p> <p>21 the customer, but there was no document showing</p> <p>22 that there were threshold --</p>
<p style="text-align: right;">Page 295</p> <p>1 didn't get any of that.</p> <p>2 Q. But that's not something you would want</p> <p>3 to document in your report, that what was being</p> <p>4 told to the diversion investigator in 2008, 2011,</p> <p>5 2015 is different than what you found during --</p> <p>6 with the benefit of all this information that you</p> <p>7 have now?</p> <p>8 A. No, because --</p> <p>9 Q. Okay.</p> <p>10 A. -- I don't know what the -- what</p> <p>11 information they obtained. I don't know -- it</p> <p>12 doesn't say that Mr. Bamberger gave me a total</p> <p>13 review of the system. It doesn't say anything</p> <p>14 like that. I can only go factually with what I</p> <p>15 know.</p> <p>16 Q. Okay. Fair.</p> <p>17 A. And what I know is what was in your</p> <p>18 documents.</p> <p>19 Q. Okay. So I'm going to hand you --</p> <p>20 A. Can I finish -- I just want to --</p> <p>21 MR. MIGLIORI: Take your time.</p> <p>22</p>	<p style="text-align: right;">Page 297</p> <p>1 Q. Okay.</p> <p>2 A. I didn't see any documents showing that</p> <p>3 there was a threshold adjustment.</p> <p>4 (Rannazzisi Deposition Exhibit 14 marked</p> <p>5 for identification and attached to the</p> <p>6 transcript.)</p> <p>7 BY MR. KOHLER:</p> <p>8 Q. All right. I've handed you Exhibit 14.</p> <p>9 And you would agree this is an ROI three days</p> <p>10 later, right?</p> <p>11 A. Okay.</p> <p>12 Q. You would agree with that, right?</p> <p>13 A. Yes.</p> <p>14 Q. All right. And so, here, it's had the</p> <p>15 benefit of the records that they requested from</p> <p>16 Publix, right? They had asked for -- in the</p> <p>17 previous ROI they asked for records. They</p> <p>18 finished up that ROI. And then they're now</p> <p>19 preparing another ROI three days later with the</p> <p>20 benefit of these additional records, right?</p> <p>21 A. Okay. Yes.</p> <p>22 Q. Yes. All right.</p>

<p style="text-align: right;">Page 298</p> <p>1 And based upon the record -- the</p> <p>2 additional records that were provided, of the</p> <p>3 records viewed by the investigators, no</p> <p>4 recordkeeping violations were discovered;</p> <p>5 additionally, no security violations were cited,</p> <p>6 correct?</p> <p>7 A. That's what it says. Yes.</p> <p>8 Q. Okay. And they closed the case, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Let's go to -- let's go to 15.</p> <p>11 (Rannazzisi Deposition Exhibit 15 marked</p> <p>12 for identification and attached to the</p> <p>13 transcript.)</p> <p>14 BY MR. KOHLER:</p> <p>15 Q. I've handed you Exhibit 15. We're going</p> <p>16 to fast-forward two years to 2017.</p> <p>17 I guess the big thing that happened here</p> <p>18 is now we've got our new distribution center,</p> <p>19 right?</p> <p>20 A. Yes. Rocket Court, yeah.</p> <p>21 Q. And this one is distributing</p> <p>22 controlled -- schedule II controlled substances,</p>	<p style="text-align: right;">Page 300</p> <p>1 A. Do you know where it is?</p> <p>2 Q. Yeah. It's page 5, paragraph 7. Do you</p> <p>3 see it there at the bottom? Do you see it?</p> <p>4 A. Yes. Thank you. Thank you.</p> <p>5 Q. And this is describing the e-SupplyLink,</p> <p>6 right?</p> <p>7 A. Yeah. I have no doubt that this is a</p> <p>8 verbal explanation that they took and reduced to</p> <p>9 writing. But again --</p> <p>10 Q. You're speculating, right?</p> <p>11 A. No, I'm not --</p> <p>12 Q. Okay.</p> <p>13 A. Well, I'm speculating, yes.</p> <p>14 Q. Okay.</p> <p>15 A. But during that time period, what they</p> <p>16 didn't say was that your own employee said that</p> <p>17 the system is not working. That's in a memo. I</p> <p>18 think it's a Zillgitt memo.</p> <p>19 Q. Yeah. And that's based -- did you ever</p> <p>20 talk to Mr. Zillgitt about that background of</p> <p>21 that, get that e-mail in context or anything?</p> <p>22 A. The e-mail was pretty straightforward.</p>
<p style="text-align: right;">Page 299</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And in fact, on the first page of this,</p> <p>4 it talks about this is the first in-depth</p> <p>5 investigation for their new DEA registration,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And it says, the onsite inspection took</p> <p>9 place from March 29th to March 30th, and the</p> <p>10 follow-up investigation, including verifications,</p> <p>11 ran through May 15th of 2017, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And if you look on the second page, no</p> <p>14 further action is necessary, and they closed out</p> <p>15 the file, right?</p> <p>16 A. Yes.</p> <p>17 Q. And no violations documented in this</p> <p>18 either, correct?</p> <p>19 A. I've got to look and see.</p> <p>20 I'm trying to see where the review of the</p> <p>21 SOM is.</p> <p>22 Q. It's --</p>	<p style="text-align: right;">Page 301</p> <p>1 The committee decided that the thing was not</p> <p>2 working. That was a pretty straightforward</p> <p>3 statement. I didn't need to analyze it. It was a</p> <p>4 pretty straightforward statement.</p> <p>5 Q. All right. On page 6 of this -- the</p> <p>6 diversion investigator reminded the folks at</p> <p>7 Publix that DEA does not approve or disapprove of</p> <p>8 a registrant's system of disclosing suspicious</p> <p>9 orders. The firm representatives were advised</p> <p>10 that the firm's system is required to be effective</p> <p>11 in reporting suspicious orders to DEA.</p> <p>12 That's similar language that you used in</p> <p>13 your, I think, '06 or '07 letters, right?</p> <p>14 A. Yes.</p> <p>15 Q. But you would agree that if they had any</p> <p>16 concerns or heartburns about our SOM system, they</p> <p>17 would have noted it in this report, right?</p> <p>18 A. Well, if they were told, they would.</p> <p>19 Q. Yeah.</p> <p>20 A. But if they're not told and they're not</p> <p>21 afforded information regarding the SOM,</p> <p>22 particularly internal documents showing that the</p>

<p style="text-align: right;">Page 302</p> <p>1 SOM is not working or describing that the SOM is 2 not working, I think that that would make its way 3 into the report. 4 Q. Did -- at any time during -- you would 5 agree that DEA investigators -- DEA diversion 6 investigators did, in fact, investigate some 7 registrants' SOM systems during enforcement 8 actions, fair? 9 A. Oh, yes, they did. 10 Q. And so you all absolutely had the tools 11 to investigate registrants' SOM systems in 12 enforcement actions, right? 13 A. But this is not an enforcement action. 14 This is an inspection. And there's different -- 15 you can't confuse the two. An enforcement action 16 means that we've already established the 17 violations, now we're going to go in -- 18 Q. Yeah -- 19 A. -- and show -- 20 Q. -- and my point is -- 21 A. This is -- this is -- 22 MR. MIGLIORI: Let him finish.</p>	<p style="text-align: right;">Page 304</p> <p>1 diversion investigator wanted additional 2 information with respect to the SOM system and 3 held the investigation open to get that 4 information, right? 5 A. Right. 6 Q. And that person provided documents that 7 outlined Publix's SOM system, did it not? 8 A. We have no idea what those documents said 9 because I've never seen those documents -- 10 Q. Well, they were provided to the DEA 11 diversion investigator. 12 A. That's fine, but I can't comment on 13 something I can't see. I would have loved to have 14 seen the documents to -- to basically see what 15 they actually said. 16 Q. Did you ask for any of those in preparing 17 your report? 18 A. I was only -- the documents I was given 19 out of Relativity is what was related to the SOMs. 20 Q. Yeah. You would agree that -- 21 MR. MIGLIORI: Hold on a second. Hold on 22 a second. This is the second time it's been said.</p>
<p style="text-align: right;">Page 303</p> <p>1 THE WITNESS: -- a cyclical inspection. 2 BY MR. KOHLER: 3 Q. And my point is that -- 4 MR. MIGLIORI: Let him finish. 5 BY MR. KOHLER: 6 Q. -- there were never any violations with 7 respect to Publix that gave you concern and which 8 required you to go in and inspect their SOM system 9 from 2005 to 2015, correct? 10 A. Because the inspectors were talking to 11 the distribution manager, the ops manager, whoever 12 they were talking to, and the ops manager was 13 telling them how -- I mean, they -- they're 14 dressing up their system so it looks good. But 15 internally, there's -- people are saying the 16 system doesn't work. 17 Q. Okay. 18 A. I mean, I think that's something that 19 should have been disclosed to DEA. And the fact 20 that it wasn't disclosed gives me pause to say 21 what else wasn't disclosed. 22 Q. We just looked at an ROI in which the DEA</p>	<p style="text-align: right;">Page 305</p> <p>1 These are documents produced by the DEA and by 2 your company. You keep asking whether you asked 3 for documents. 4 If you know of documents that exist that 5 you didn't produce -- 6 MR. KOHLER: That's not what I'm saying. 7 MR. MIGLIORI: Okay. 8 BY MR. KOHLER: 9 Q. Did -- you would agree that all the 10 non-publicly available stuff that you reviewed to 11 prepare your report was provided to you by the 12 attorneys for Cobb County, correct? 13 MR. MIGLIORI: Through -- whoa -- 14 Go ahead. Answer the question. 15 MR. KOHLER: Yeah, there's nothing wrong 16 with the question. 17 MR. MIGLIORI: Well, there is, because 18 the documents come from you. Whether we have them 19 or not or whether he gets them from us -- I didn't 20 produce your documents. 21 MR. KOHLER: Let me rephrase my question. 22</p>

<p style="text-align: right;">Page 306</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. Every non-publicly available that you</p> <p>3 reviewed to prepare your report was given to you</p> <p>4 by your attorneys, right?</p> <p>5 A. Yes. They dumped all of the documents</p> <p>6 that they received into my lap and said, here it</p> <p>7 is --</p> <p>8 Q. Okay.</p> <p>9 A. -- do whatever you've got to do. So...</p> <p>10 Q. What did I do with Exhibit 4?</p> <p>11 A. Exhibit 4?</p> <p>12 Q. That was the one I put out to the side.</p> <p>13 If you could --</p> <p>14 A. Hold on. I'll find it.</p> <p>15 10, 8 -- getting close.</p> <p>16 Q. It's this right here (indicating).</p> <p>17 A. Okay. There we go. Okay.</p> <p>18 Q. Okay. So this has already been</p> <p>19 identified. This is the report you gave with</p> <p>20 respect to Publix in the Cobb County case,</p> <p>21 correct?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 308</p> <p>1 dispensing practices or procedures, correct?</p> <p>2 A. No, it's just what's in the report.</p> <p>3 Q. When did the attorneys first approach you</p> <p>4 about providing an opinion in this case?</p> <p>5 A. Well, it was a month before I actually</p> <p>6 started receiving documents, which was in 2022, I</p> <p>7 guess.</p> <p>8 Q. Your first bill was -- it looked like you</p> <p>9 had noted September of 2023.</p> <p>10 When were you first approached about</p> <p>11 providing --</p> <p>12 A. 2023, yes.</p> <p>13 Q. Was it 2023?</p> <p>14 A. Well, it's -- do you have the bills</p> <p>15 handy? It would be in the bills.</p> <p>16 Q. Okay.</p> <p>17 A. It would be a month before the first time</p> <p>18 I received it. So on the date to and from in the</p> <p>19 bill, that first date, it probably would be about</p> <p>20 three weeks to a month before.</p> <p>21 Q. All right. Who reached out to you about</p> <p>22 your willingness to give an opinion in this case?</p>
<p style="text-align: right;">Page 307</p> <p>1 Q. And I want to -- I had similar questions</p> <p>2 that Albertsons' attorney had as well.</p> <p>3 To be clear, your opinions are solely</p> <p>4 related to Publix's role as a distributor, not as</p> <p>5 a dispenser, fair?</p> <p>6 MR. MIGLIORI: Objection. The report</p> <p>7 speaks for itself.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: Well, as I explained</p> <p>10 previously, my report has instances where I</p> <p>11 reviewed certain things that go to corresponding</p> <p>12 responsibility. However, my role in this</p> <p>13 litigation was to look at the distribution</p> <p>14 functions. However, there is interplay between</p> <p>15 distribution and corresponding responsibility.</p> <p>16 BY MR. KOHLER:</p> <p>17 Q. You're not going to provide any expert</p> <p>18 opinions in this case regarding Publix's</p> <p>19 dispensing practices, correct?</p> <p>20 A. Just what's in the report.</p> <p>21 Q. And you're not going to -- and you have</p> <p>22 not been asked to provide any opinions on Publix's</p>	<p style="text-align: right;">Page 309</p> <p>1 A. It would have probably been Mike Elsner.</p> <p>2 Q. At Motley Rice?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. At the time -- it was Elsner,</p> <p>5 E-l-s-n-e-r?</p> <p>6 A. Yes.</p> <p>7 Q. At the time Mr. Elsner approached you</p> <p>8 about giving a potential opinion in this case, had</p> <p>9 you already formed any opinions concerning</p> <p>10 Publix's distribution practices?</p> <p>11 A. No.</p> <p>12 Q. Had you formed any opinions concerning</p> <p>13 Publix on its dispensing practices?</p> <p>14 A. No, because I had no documents to review.</p> <p>15 I mean, I -- I review documents, and then I form</p> <p>16 an opinion. I don't have any preconceived</p> <p>17 opinions going in.</p> <p>18 Q. All right. Were you surprised that</p> <p>19 Publix was a party in this case and that you were</p> <p>20 being asked to give an opinion?</p> <p>21 A. Was I surprised they were a party? No.</p> <p>22 I mean, I --</p>

<p style="text-align: right;">Page 310</p> <p>1 Q. Did that not surprise you? You'd been 2 investigating Florida intently for all those 3 years. Never was on your radar. Your daughter 4 and you go shop at Publix. Were you, like, wow, 5 this is Publix; you're asking me to render an 6 opinion about Publix? 7 Did that -- you're, like -- that didn't 8 cross your mind at all or anything like that? 9 MR. MIGLIORI: Objection to form. 10 Go ahead. 11 THE WITNESS: It really didn't. You 12 asked me to look at and review policies and 13 procedures relating to a -- SOMs, and I do it. 14 And if I don't find anything, I basically say, 15 there's nothing here. 16 BY MR. KOHLER: 17 Q. But you've never not found anything, 18 right? 19 A. Well -- 20 Q. You've never not found a distributor's 21 SOM system that you didn't think was up to par, 22 right?</p>	<p style="text-align: right;">Page 312</p> <p>1 identified in the report, I didn't get the 2 documents to see it. 3 Q. The time period of this report, is it 4 fair to say that's from -- what time period? 5 A. Well, are you talking about the time 6 period that I drafted the report -- 7 Q. No. What time period does your opinions 8 cover? 9 A. December 2005 up to 20-- I guess 2020, 10 when you started OrderInsite. 11 Q. So in the executive summary, you use 12 similar language in a lot of these reports. You 13 say period from '06 to '14 and beyond. 14 A. Yeah. 15 Q. Why didn't you just say 2006 to 2020? 16 A. Because the system that was in place, 17 OrderInsite, I never really had the opportunity to 18 look at it because it was just operational at that 19 point in time, and we had no documents related to 20 it other than the brief documents that I got for 21 OrderInsite. 22 I guess I could have said that. I could</p>
<p style="text-align: right;">Page 311</p> <p>1 A. Based on the documents, policies and 2 procedures provided by the company through the 3 litigation, no, I have not. 4 Q. And just to be clear, the invoices I 5 handed you are not the sum total of the invoices, 6 right? There's additional invoices that reflect 7 what you did, when you did it, and how much time 8 it took you, right? 9 A. Yeah, there's a log. 10 Q. All right. 11 A. It's a log; it's not a -- 12 Q. All right. As you sit here today, do you 13 have any changes or additions you want to make to 14 that report? 15 MR. MIGLIORI: Objection. Overly broad. 16 Go ahead. 17 THE WITNESS: No. 18 BY MR. KOHLER: 19 Q. Have you formed any opinions regarding 20 Publix's operations that are not identified in 21 that report? 22 A. Well, if there are operations not</p>	<p style="text-align: right;">Page 313</p> <p>1 have said, well, I did a full analysis right up 2 through 2019, because that's when you did 3 e-SupplyLink. And -- but e-SupplyLink is pretty 4 detailed in my report. 5 So -- and as far as why didn't I say 6 2005? Because it was December 2005, and I'm not 7 even sure -- I couldn't tell you when they started 8 in December 2005. So I just said 2006 because -- 9 Q. All right. In your executive summary you 10 say, For reasons discussed more fully herein, 11 Kroger and Publix each failed to fulfill their 12 obligations by instituting ineffective diversion 13 control programs; therefore -- thereby creating 14 conditions that allowed diversion and the 15 oversupply of opioids in Cobb County. 16 Did I read that correctly? That's in the 17 summary page there, third paragraph. 18 A. I believe so. Hold on, I'm... 19 MR. MIGLIORI: If you weren't 20 following -- 21 THE WITNESS: Yeah, I have to got to 22 go --</p>

<p style="text-align: right;">Page 314</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. Oh, I'm sorry. I thought you were on</p> <p>3 the --</p> <p>4 A. No, I was on --</p> <p>5 Q. Go to page 1.</p> <p>6 A. I was on the Publix section.</p> <p>7 Q. Right around here (indicating). Start</p> <p>8 off, For the reasons discussed more fully herein.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Did I read that correctly, both Kroger</p> <p>12 and Publix created conditions that allowed the</p> <p>13 diversion and oversupply of opioids in Cobb</p> <p>14 County?</p> <p>15 MR. MIGLIORI: Objection. I don't know</p> <p>16 how he would know whether you read it earlier --</p> <p>17 the document speaks for itself. It says what it</p> <p>18 says.</p> <p>19 THE WITNESS: Yeah.</p> <p>20 BY MR. KOHLER:</p> <p>21 Q. What percentage of the diversion and</p> <p>22 oversupply of opioids in Cobb County did Kroger</p>	<p style="text-align: right;">Page 316</p> <p>1 system has got a substantial role. And I can't</p> <p>2 quantify the substantial role other than they have</p> <p>3 a substantial role because they don't have a</p> <p>4 system in place that works. And if the system is</p> <p>5 not working, diversion soon follows.</p> <p>6 BY MR. KOHLER:</p> <p>7 Q. All right. So you can't tell me whether</p> <p>8 Kroger was more culpable in the diversion and</p> <p>9 oversupply of opioids or Publix, right? You can't</p> <p>10 say that, can you?</p> <p>11 A. No. My role was to look at each</p> <p>12 individual system and, based on depositions,</p> <p>13 documents, e-mails, and things that were provided,</p> <p>14 make a determination if the SOMs were complying</p> <p>15 with 21 CFR and the Controlled Substances Act.</p> <p>16 Q. All right. Where would I go in</p> <p>17 Cobb County to find the oversupply of opioids in</p> <p>18 the county? Where would I go? If I wanted to</p> <p>19 find the oversupply of opioids, where would I go</p> <p>20 to find it?</p> <p>21 MR. MIGLIORI: Objection to form.</p> <p>22 THE WITNESS: I'm not following.</p>
<p style="text-align: right;">Page 315</p> <p>1 cause?</p> <p>2 MR. MIGLIORI: Objection. Foundation.</p> <p>3 Go ahead.</p> <p>4 THE WITNESS: I have no idea what their</p> <p>5 percentage was.</p> <p>6 BY MR. KOHLER:</p> <p>7 Q. Is it 1 percent?</p> <p>8 A. Again --</p> <p>9 MR. MIGLIORI: Asked and answered.</p> <p>10 THE WITNESS: My role was to look at</p> <p>11 their SOMs.</p> <p>12 BY MR. KOHLER:</p> <p>13 Q. All right. But you come out here and you</p> <p>14 state in this executive summary that we both</p> <p>15 contributed to the oversupply and diversion of</p> <p>16 opioids in Cobb County. And I'm just curious, is</p> <p>17 Kroger more responsible? Is it less responsible</p> <p>18 than Publix?</p> <p>19 MR. MIGLIORI: Objection. The document</p> <p>20 speaks for itself.</p> <p>21 THE WITNESS: I think that any</p> <p>22 distributor that doesn't have an operational SOM</p>	<p style="text-align: right;">Page 317</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. You say that there's an oversupply of</p> <p>3 opioids in Cobb County that my client caused. I</p> <p>4 live in Cobb County, and I want to go and find</p> <p>5 them to make sure my kids aren't going around to</p> <p>6 find these oversupply of opioids.</p> <p>7 Where would I go?</p> <p>8 A. Well, you could go to the distributors</p> <p>9 and find out how they're --</p> <p>10 Q. No, no, I'm saying in Cobb County, where</p> <p>11 would I go?</p> <p>12 MR. MIGLIORI: Don't interrupt him.</p> <p>13 MR. KOHLER: But he's not answering my</p> <p>14 question. I said in Cobb County --</p> <p>15 MR. MIGLIORI: He said three words and</p> <p>16 you interrupted him again.</p> <p>17 MR. KOHLER: He said you go to</p> <p>18 distributors. I'm asking --</p> <p>19 MR. MIGLIORI: I understand you're</p> <p>20 passionate about your client. But ratchet it</p> <p>21 down. He's trying to answer your question and</p> <p>22 you're interrupting him.</p>

<p style="text-align: right;">Page 318</p> <p>1 THE WITNESS: I would go to the</p> <p>2 distributors to look at who they are distributing</p> <p>3 to in Cobb County, then go to the pharmacies and</p> <p>4 see what those pharmacies are --</p> <p>5 BY MR. KOHLER:</p> <p>6 Q. Okay. Which pharmacy -- which Publix</p> <p>7 Pharmacy do I need to go to in Cobb County to find</p> <p>8 the oversupply?</p> <p>9 A. I don't know. I think if you looked at</p> <p>10 Mr. Catizone's -- Dr. Catizone's report, he kind</p> <p>11 of outlines what --</p> <p>12 Q. I'm asking you. You said there's an</p> <p>13 oversupply in Cobb County.</p> <p>14 A. Yes.</p> <p>15 Q. I need to make sure that my kids don't go</p> <p>16 to that Publix retail pharmacy and be subject to</p> <p>17 this oversupply.</p> <p>18 And you've seen the ARCOS data, right?</p> <p>19 A. I've looked at the ARCOS data --</p> <p>20 MR. MIGLIORI: Objection.</p> <p>21 THE WITNESS: -- in Cobb County, yes.</p> <p>22</p>	<p style="text-align: right;">Page 320</p> <p>1 Q. All right. Do you know Mr. McCann?</p> <p>2 A. I've met Mr. McCann on a couple of</p> <p>3 occasions. Yes.</p> <p>4 Q. When is the last time you've spoken to</p> <p>5 Mr. McCann?</p> <p>6 A. It's been a long time.</p> <p>7 Q. Did you review any part of Mr. McCann's</p> <p>8 expert report that was given in the Cobb County</p> <p>9 case?</p> <p>10 A. I'm pretty sure I did because that the</p> <p>11 Cobb County -- all of the Cobb County pharmacies.</p> <p>12 Q. What part of his report did you review?</p> <p>13 A. I reviewed the appendixes.</p> <p>14 Q. And what part of the appendix interested</p> <p>15 you?</p> <p>16 A. Well, I wanted to see what the -- what</p> <p>17 the -- pharmacy list in the county, how many</p> <p>18 pharmacies are in the county, what was the range</p> <p>19 of purchases during that time period.</p> <p>20 Q. Did you assist Mr. -- it's Dr., right?</p> <p>21 A. It's Dr. McCann. Yes.</p> <p>22 Q. Dr. McCann. Sorry.</p>
<p style="text-align: right;">Page 319</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. For Publix, correct?</p> <p>3 A. For everybody.</p> <p>4 Q. For Publix, too, right?</p> <p>5 A. Yes.</p> <p>6 Q. And you've seen all their retail</p> <p>7 pharmacies in Publix, correct, and in Cobb County,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Which Publix -- which retail pharmacy do</p> <p>11 I need to tell my kids to stay away from because</p> <p>12 there's an oversupply?</p> <p>13 MR. MIGLIORI: Objection. Form.</p> <p>14 Foundation. Scope and time. And calm down.</p> <p>15 MR. KOHLER: I'm not --</p> <p>16 THE WITNESS: Here's the deal. You're</p> <p>17 asking what Publix Pharmacy you should go to. I</p> <p>18 don't know.</p> <p>19 BY MR. KOHLER:</p> <p>20 Q. All right.</p> <p>21 A. They're your client. You should ask</p> <p>22 them.</p>	<p style="text-align: right;">Page 321</p> <p>1 Did you assist Dr. McCann in any way</p> <p>2 preparing his expert report in this case?</p> <p>3 A. Absolutely not.</p> <p>4 Q. Did you provide any input to Dr. McCann</p> <p>5 to use on the use of the SOM flagging methods in</p> <p>6 his report?</p> <p>7 A. Absolutely not. I haven't talked to</p> <p>8 Dr. McCann since this litigation started in 2017</p> <p>9 or '18.</p> <p>10 Q. Did you analyze the SOM flagging methods</p> <p>11 used by Dr. McCann in his report?</p> <p>12 A. The SOM flagging methods?</p> <p>13 Q. Yeah.</p> <p>14 A. No, I don't believe I did.</p> <p>15 Q. So you didn't make a determination about</p> <p>16 whether or not the SOM flagging methods he used</p> <p>17 comply with the Controlled Substances Act or its</p> <p>18 regulations?</p> <p>19 A. No.</p> <p>20 Q. Do you intend to offer any testimony in</p> <p>21 this case regarding whether any of the SOM</p> <p>22 flagging methods discussed by Dr. McCann satisfies</p>

<p style="text-align: right;">Page 322</p> <p>1 the requirements of 1301-74 [sic]? 2 A. I don't believe it's in my report, so no. 3 Q. Having the benefit of having worked at 4 the DEA for 30 years, was there anything that you 5 felt would have been useful in preparing your 6 report that the DEA had that you didn't -- you 7 weren't privy to, that you would say, you know 8 what, I wish I would have had that or had access 9 to that information to help in preparing my 10 report? 11 A. No. I pretty much got everything I 12 needed. The ARCOS data was -- you know, SLCG had 13 the ARCOS data. So no, there was really nothing I 14 needed from -- 15 Q. In preparing your report, did you talk to 16 anybody at the DEA? 17 A. No, I don't talk to people at the DEA -- 18 Q. Did you -- 19 A. -- period. 20 Q. I'm sorry? 21 A. Period. I don't talk to people at DEA, 22 not until this litigation is over. It wouldn't be</p>	<p style="text-align: right;">Page 324</p> <p>1 a contractor of Motley Rice. 2 Q. Did you talk to anybody with the Georgia 3 drugs and narcotics agency to help prepare your 4 report? 5 A. No. I try and avoid talking to anybody 6 when I'm preparing my report. I don't need any 7 external help reviewing documents. So until my 8 report is over and done with and submitted, I 9 don't talk to anybody about my report. 10 Q. But in help preparing your opinions, you 11 didn't go out and talk to anybody to get 12 information? You didn't do any independent 13 investigation? All you did was rely upon the 14 stuff that the attorneys gave you? 15 A. The documents speaks for themselves. The 16 documents -- 17 Q. All right. 18 A. -- that I review speak for themselves. 19 No one from the outside of Publix is going to tell 20 me something that's not within those documents, 21 because they're not privy to that information. 22 But when I look at your documents, when I</p>
<p style="text-align: right;">Page 323</p> <p>1 appropriate. 2 Q. What about former people that worked at 3 the DEA? In preparing your report. 4 A. No, not in preparing my report. There's 5 one DEA person who actually reviews and provides, 6 like, editorial comment and makes sure that my 7 cites are correct, does the reliance list, and 8 makes sure that, if I say something, it's clear 9 and it's not confusing. And other than that, 10 there's no one else. 11 Q. Who is that? 12 A. That would be Mimi Paredes. 13 Q. I'm sorry? 14 A. Mimi Paredes. 15 Q. Did she do that with this report? 16 A. She did that with this report. 17 Q. Okay. And did you pay her? 18 A. No. She's separate. She works for 19 Motley Rice as well. 20 Q. Oh, I'm sorry. So she -- she's employed 21 by Motley Rice? 22 A. She's a -- I guess you would consider her</p>	<p style="text-align: right;">Page 325</p> <p>1 look at your depositions and I see what people are 2 saying, that helps me along. But just calling 3 somebody at the Georgia Bureau of Investigation 4 and saying, what do you know about Publix, that's 5 not going to help me. 6 Q. Did you talk to anybody in Cobb County 7 about -- you know, in helping you prepare your 8 report? 9 A. No. I did the normal demographics -- 10 look at. I looked at hospital emergency room 11 admissions and things like that. But no, I did 12 not -- I did not talk to anybody there. 13 Q. Did you tell anybody in Cobb County, hey, 14 you know, I believe Publix caused the opioid 15 crisis in Cobb County? 16 A. Again, I've never talked to anybody in 17 Cobb County regarding my report. 18 Q. And other than -- other than what you 19 pulled off of the Wiki page about Cobb County, is 20 that all you really know about Cobb County? 21 A. No, I did more than the Wiki page. Plus, 22 I reviewed certain emergency room data and things</p>

<p style="text-align: right;">Page 326</p> <p>1 like that.</p> <p>2 Q. Did you talk to anybody at Wellstar about</p> <p>3 that stuff?</p> <p>4 A. No.</p> <p>5 Q. Did you talk to the chief of police over</p> <p>6 in Cobb County?</p> <p>7 A. No.</p> <p>8 Q. What about Marietta -- the City of</p> <p>9 Marietta chief of police --</p> <p>10 A. No.</p> <p>11 Q. -- about your conclusions?</p> <p>12 A. No, not Marietta or Acworth or any of the</p> <p>13 others. But I could tell you that they wouldn't</p> <p>14 have the information I was looking for because</p> <p>15 what I was looking for was basic information and</p> <p>16 detailed information on the SOM program. And they</p> <p>17 couldn't provide that. I'm sure they wouldn't</p> <p>18 know what that is.</p> <p>19 Q. But your opinion is that you believe that</p> <p>20 Publix caused conditions that may have led to the</p> <p>21 oversupply of opioids in the county, right?</p> <p>22 MR. MIGLIORI: Objection to form.</p>	<p style="text-align: right;">Page 328</p> <p>1 CVS or --</p> <p>2 A. No.</p> <p>3 Q. Did you analyze the dosage breakdown at</p> <p>4 Publix Cobb County pharmacies?</p> <p>5 A. I did not.</p> <p>6 Q. Did you conduct any store-level analysis</p> <p>7 of Publix Cobb County pharmacies?</p> <p>8 A. No.</p> <p>9 Q. Did you review or consider any of</p> <p>10 Publix's CII Pull reports concerning its</p> <p>11 Cobb County pharmacies?</p> <p>12 A. I don't think I had access to their C2</p> <p>13 pill reports.</p> <p>14 Q. Did you ever perform an analysis of how</p> <p>15 many chain versus independent pharmacies are in</p> <p>16 Cobb County?</p> <p>17 A. No.</p> <p>18 Q. Did you perform any analysis -- are you</p> <p>19 all right?</p> <p>20 A. Yeah.</p> <p>21 Q. Did you perform any analysis of the</p> <p>22 controlled substances ordered versus</p>
<p style="text-align: right;">Page 327</p> <p>1 Go ahead.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. KOHLER:</p> <p>4 Q. And so you don't believe that the chief</p> <p>5 of police or the head of Wellstar would be able to</p> <p>6 comment about, yeah, because of Publix's</p> <p>7 oversupply, it caused harm to the county?</p> <p>8 A. Well, again, that was not my role.</p> <p>9 Q. Yeah.</p> <p>10 A. And, I mean, the report and the instances</p> <p>11 in the report that are documented pretty much</p> <p>12 showed what I -- what my findings are. So...</p> <p>13 Q. Did you analyze any dispensing data for</p> <p>14 Publix's pharmacy in or outside of Cobb County?</p> <p>15 A. No dispensing data -- I didn't analyze</p> <p>16 any dispensing data.</p> <p>17 Q. Did you perform a comparison of any</p> <p>18 Publix Cobb County pharmacy against any other</p> <p>19 pharmacies in the county?</p> <p>20 A. A comparison as far as what?</p> <p>21 Q. Between the Publix Cobb County pharmacies</p> <p>22 and any other -- like a Kroger or a Walgreens or a</p>	<p style="text-align: right;">Page 329</p> <p>1 non-controlled substances ordered by Publix</p> <p>2 Cobb County pharmacies?</p> <p>3 A. I was not provided with that information.</p> <p>4 Q. So the answer would be, no, you didn't</p> <p>5 perform that analysis?</p> <p>6 A. No.</p> <p>7 Q. Did you perform an analysis of the method</p> <p>8 of payment by Publix's customers at Publix's</p> <p>9 Cobb County pharmacies when they purchased opioid</p> <p>10 medication?</p> <p>11 A. Again, that information was not provided.</p> <p>12 So...</p> <p>13 Q. You provided an expert report in</p> <p>14 February of 2020 in the Ohio case, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And in that report, you concluded that</p> <p>17 the distributors McKesson, Cardinal,</p> <p>18 AmerisourceBergen, and H.D. Smith each failed to</p> <p>19 design and operate SOMs in a manner reasonably</p> <p>20 calculated to detect suspicious orders, correct?</p> <p>21 A. I don't know if that -- I don't even know</p> <p>22 if that document is unsealed. I can't -- that</p>

<p style="text-align: right;">Page 330</p> <p>1 document was sealed, and the judge has never given 2 approval for that document to be released. So if 3 you have that document, I -- 4 Q. Well, is that the opinion you gave -- 5 MR. MIGLIORI: Objection. 6 BY MR. KOHLER: 7 Q. -- in that case? 8 MR. MIGLIORI: Objection. Do you need 9 counsel, if you're talking about a privilege? 10 THE WITNESS: If it -- I don't know. I'm 11 asking. It's a sealed document -- 12 MR. MIGLIORI: Well, I don't want you to 13 get in trouble. My job is just to make sure -- 14 THE WITNESS: It's Judge McConaghy 15 court -- 16 MR. KOHLER: That's fine. 17 THE WITNESS: In fact, McConaghy sealed 18 that and said, this -- this order -- this is 19 sealed. 20 BY MR. KOHLER: 21 Q. Are you talking about the report you gave 22 in that case is sealed?</p>	<p style="text-align: right;">Page 332</p> <p>1 that for the record? 2 MR. MIGLIORI: Yes. During the break, I 3 learned just from the witness that the witness has 4 been instructed by -- not Motley Rice, but other 5 counsel that's retained him in the Ohio case that 6 he's not to talk about that testimony or that 7 report without express permission from the 8 attorney general's office directly and that the 9 report had been put under seal by the Court. 10 I understand from you all that you've 11 signed a protective order with respect to it, but 12 his concerns are the direct admonitions he 13 received from the attorney general in Ohio, that 14 that enjoys some kind of protection that he's not 15 to violate without express permission. 16 So he's not trying to be obstreperous, 17 but he also doesn't want to step into something 18 he's not authorized to do. 19 MR. KOHLER: Okay. So -- I did have some 20 questions about that report, but I don't want you 21 to get in trouble, so I won't ask. I had an 22 exhibit and some questions about that, so I will</p>
<p style="text-align: right;">Page 331</p> <p>1 A. Yeah. The judge sealed -- once the 2 settlement was done, the judge sealed the report 3 and said -- 4 MR. KOHLER: Can we take a two-minute 5 break? 6 MR. MIGLIORI: Yeah, I don't want him to 7 get into -- 8 VIDEO TECHNICIAN: The time is 3:30 p.m. 9 This ends unit 5. We're off the record. 10 (A recess was taken.) 11 VIDEO TECHNICIAN: The time is 3:40 p.m. 12 This begins unit number 6. We're on the record. 13 MR. KOHLER: Okay. We will go back on. 14 BY MR. KOHLER: 15 Q. Thanks for the break, Mr. Rannazzisi. 16 When we broke, I was getting into some questions 17 about the expert opinion you rendered in the State 18 of Ohio case, right? 19 A. Yes. 20 Q. Okay. And there are some concerns about 21 what you can and can't do. 22 MR. KOHLER: Don, do you want to explain</p>	<p style="text-align: right;">Page 333</p> <p>1 move on. 2 But I want to -- Don, I want to reserve 3 my right, if need be down the road, to -- 4 MR. MIGLIORI: We'll try to work with you 5 on whatever -- however we have to solve that 6 problem. 7 MR. KOHLER: Okay. We'll move on, then. 8 BY MR. KOHLER: 9 Q. Let's talk -- let's talk about the SOM 10 system. 11 A. Okay. 12 Q. While you were at the DEA, you would 13 agree that the DEA did not have any internal 14 guidance as to what is a suspicious order. 15 A. Well, we used the definition under 16 1301.74(b), and then we sent separate guidance to 17 the industry, distributors, and manufacturers in 18 those three letters in 2006 and 2007. 19 Q. Okay. My question was, other than the 20 reg you mentioned, was there any internal guidance 21 at the DEA other than the reg with respect to what 22 is a suspicious order?</p>

<p style="text-align: right;">Page 334</p> <p>1 MR. MIGLIORI: Objection to form.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: I believe there's a -- in</p> <p>4 this litigation, there's a training manual cite</p> <p>5 that discusses the internal -- what is expected of</p> <p>6 the investigators regarding suspicious orders and</p> <p>7 what a suspicious order is, yes.</p> <p>8 BY MR. KOHLER:</p> <p>9 Q. I'm sorry, what --</p> <p>10 A. There's a training manual. I --</p> <p>11 generally they don't release it, but somebody</p> <p>12 released it, and it was in one of the</p> <p>13 litigation --</p> <p>14 Q. And what is that?</p> <p>15 A. -- one of the cases.</p> <p>16 There's a -- there's a diversion</p> <p>17 investigative training manual where they discuss</p> <p>18 SOMs.</p> <p>19 Q. Okay. And would this have been -- do you</p> <p>20 know when it would first discuss what a suspicious</p> <p>21 order is?</p> <p>22 A. I'm pretty sure it covered that. Like I</p>	<p style="text-align: right;">Page 336</p> <p>1 unusual size, frequency anomaly, or orders that</p> <p>2 substantially deviate from normal pattern orders.</p> <p>3 And, you know, depending on what kind of system</p> <p>4 you operate, there's multiple ways of doing that.</p> <p>5 Q. Okay. So when you -- give me some</p> <p>6 examples of the first criteria, size.</p> <p>7 A. Okay.</p> <p>8 Q. Just --</p> <p>9 A. Size is based on several -- on several</p> <p>10 different types of systems. So the easiest to</p> <p>11 identify is a threshold-based system. So unusual</p> <p>12 size is not just it's the largest -- it's the</p> <p>13 largest that you've ever seen, because unusual</p> <p>14 size could also encompass a particular dosage unit</p> <p>15 that doesn't reach threshold, yet is extremely</p> <p>16 high.</p> <p>17 So let's take oxycodone 30-milligram as</p> <p>18 an example, since we talked about that before.</p> <p>19 Oxycodone 30-milligram was the most abused opioid</p> <p>20 in the U.S. between probably 2009 and 2014. It</p> <p>21 was definitely the most sought after for abuse.</p> <p>22 If you're a pharmacy and you had a</p>
<p style="text-align: right;">Page 335</p> <p>1 said, it's -- I've seen that document before.</p> <p>2 I've never used it, but I've seen it before.</p> <p>3 Q. And would the --</p> <p>4 A. In this liti- -- not in this litigation</p> <p>5 but in previous litigations.</p> <p>6 Q. Would the diversion investigators that we</p> <p>7 talked about earlier, would they have been privy</p> <p>8 to this diversion inspector training manual?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. Would you agree that two companies can</p> <p>11 have different suspicious order monitoring systems</p> <p>12 but both still comply with the CSA and the regs?</p> <p>13 A. Well, yeah. That's the whole basis of</p> <p>14 why the department and DEA has said that it's up</p> <p>15 to the companies to develop their systems, and the</p> <p>16 DEA does not approve a system.</p> <p>17 Q. What different factors do you consider</p> <p>18 and evaluate in order to determine if it's</p> <p>19 suspicious in nature?</p> <p>20 A. Well, depending on the system you're</p> <p>21 operating, you look at three things. You look at</p> <p>22 whether the system is a -- identifies an order of</p>	<p style="text-align: right;">Page 337</p> <p>1 threshold, we'll say, 5,000 tablets and you are</p> <p>2 using the base drug code for 5- -- oxycodone.</p> <p>3 Okay? And you're using that as your threshold and</p> <p>4 you set your threshold at 5,000 tablets. You</p> <p>5 might never breach that threshold. You might</p> <p>6 breach that threshold and it becomes an order of</p> <p>7 interest and you investigate it. But you might</p> <p>8 never breach that threshold.</p> <p>9 But when you look at the orders, that</p> <p>10 threshold is not -- 80 percent of that threshold</p> <p>11 is oxycodone 30, well, that's a problem because</p> <p>12 that's not -- not normal.</p> <p>13 So you might have a system that doesn't</p> <p>14 pick up that because it's a threshold-based</p> <p>15 system. And when I talk about inflated</p> <p>16 thresholds, it might not cover that.</p> <p>17 And that's where these all work together.</p> <p>18 It might not be covered in the threshold portion,</p> <p>19 the unusual size, because it hasn't breached their</p> <p>20 threshold. So then you have to look at</p> <p>21 substantially deviating from a normal pattern.</p> <p>22 And there's no pharmacy that dispenses 90 percent</p>

<p style="text-align: right;">Page 338</p> <p>1 or 80 percent oxy 30 over every other oxycodone 2 product. That's a substantial deviation. 3 So it's not just the size. You might be 4 perfectly under threshold, but if you're not 5 looking at substantial deviation to determine how 6 that pharmacy operates on that particular base 7 code, you would never pick up that most of their 8 drug is oxy 30. And that's how it works. 9 So you breach a threshold, it's an order 10 of interest, you investigate it. You don't breach 11 a threshold but the order anomaly is because 12 there's a particular high-dose opioid that 13 encompasses most of the drug ordered during that 14 period of time, whatever the threshold period is, 15 then you look at substantial deviation, and that 16 is a substantial deviation. 17 And we've seen pharmacies like that, 18 where they might be under threshold, but their 19 substantial deviation using the oxy 30s over other 20 drugs are just -- it's so glaring that you 21 couldn't possibly miss it. 22 Q. All right. Thank you for that</p>	<p style="text-align: right;">Page 340</p> <p>1 Q. Okay. You agree that -- okay. 2 Would you agree that a system that 3 compares pharmacies against their peers and 4 against all of a chain's pharmacies to identify 5 outliers can be effective for detecting pharmacies 6 with suspicious ordering patterns? 7 A. Again, if you're doing all three, yes, it 8 can. 9 Q. All right. Would you agree that a system 10 that identifies unusual opioid inventory 11 adjustments can be effective for detecting 12 pharmacies at which diversion may be occurring? 13 A. Explain -- 14 MR. MIGLIORI: Objection to form. 15 Go ahead. 16 THE WITNESS: I'm sorry. 17 Explain what you mean by that, an 18 inventory adjustment. 19 BY MR. KOHLER: 20 Q. Well, if you're doing inventory and you 21 don't have everything on the shelves and you've 22 got more than what you're supposed to have or less</p>
<p style="text-align: right;">Page 339</p> <p>1 background. 2 You would agree that the DEA leaves that 3 design and implementation of the SOM system to the 4 registrant, right? I think you've talked about 5 that. 6 A. It's in the letter. 7 Q. Yeah. The DEA does not tell the 8 distributor what system to use to monitor for 9 suspicious orders, correct? 10 A. No. 11 Q. That's not correct or you agree? 12 A. DEA does not tell the registrant how to 13 monitor for suspicious orders. It's up to them 14 to -- 15 Q. You would agree a system can be more than 16 just a computer software program, right? 17 A. Well, I agree it has to be. 18 Q. Okay. 19 A. Because you have to have due diligence. 20 Just a system kicking out an order means nothing 21 unless somebody is investigating the order. So 22 there has got to be a human element to any system.</p>	<p style="text-align: right;">Page 341</p> <p>1 than what you're supposed to have, and so you make 2 an adjustment. 3 A. Well, that's -- 4 MR. MIGLIORI: Objection to form. 5 THE WITNESS: Well, that's auditing, and 6 that should be done on a biannual -- I mean, most 7 pharmacies do it very -- regularly do auditing. 8 But yeah, it should be done. But there's other 9 things -- when you say inventory adjustment, a lot 10 of people mistake -- and we've discussed this 11 before -- mistake doing a SOM to a loss prevention 12 issue. And in fact, there are companies that have 13 said, oh, well, we do loss -- we have our loss 14 prevention, monitor the amount of drug coming in 15 and the amount of drug going out. Well, that's -- 16 that's great if you're looking for loss, but it 17 has nothing to do with the SOM. 18 BY MR. KOHLER: 19 Q. Would you agree that a system that 20 identifies an ever-increasing opioid inventory can 21 be effective for detecting pharmacies at which 22 diversion may be occurring?</p>

<p style="text-align: right;">Page 342</p> <p>1 MR. MIGLIORI: Objection to form.</p> <p>2 THE WITNESS: Again, you have to explain</p> <p>3 that. What are they monitoring exactly? They're</p> <p>4 just monitoring the drugs coming into the</p> <p>5 pharmacy?</p> <p>6 BY MR. KOHLER:</p> <p>7 Q. They're just -- they're ordering -- every</p> <p>8 30 days they've ordering more than what they did</p> <p>9 the prior 30 days.</p> <p>10 A. And it's being triggered under the SOM?</p> <p>11 Q. Yeah. Is part of a SOM system to detect,</p> <p>12 you know, a pharmacy making a lot of orders?</p> <p>13 A. It can be --</p> <p>14 MR. MIGLIORI: Objection to form.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: It can be if it's being</p> <p>17 followed up with appropriate due diligence. Yes.</p> <p>18 BY MR. KOHLER:</p> <p>19 Q. Would you agree that a system that</p> <p>20 includes review of dispensing trends at a pharmacy</p> <p>21 and determining whether an ordering threshold</p> <p>22 should be increased for a pharmacy can be</p>	<p style="text-align: right;">Page 344</p> <p>1 A. Yes.</p> <p>2 Q. Was that ever -- during your time at the</p> <p>3 DEA, was that ever communicated to registrants,</p> <p>4 what you said here?</p> <p>5 A. I'd have to look at the letters, but I'm</p> <p>6 pretty sure the letters -- I believe it's in</p> <p>7 there. I don't have the letters handy, but I</p> <p>8 thought they -- that portions of that were in the</p> <p>9 letter.</p> <p>10 It was also in the --</p> <p>11 Q. Did you --</p> <p>12 MR. MIGLIORI: Let him finish.</p> <p>13 THE WITNESS: I think it was also in some</p> <p>14 of the cases that were adjudicated in the</p> <p>15 administrative courts about what they should be</p> <p>16 looking for.</p> <p>17 BY MR. KOHLER:</p> <p>18 Q. Other than -- the letters you're</p> <p>19 referring to are the ones from '06 and '07?</p> <p>20 A. Yes.</p> <p>21 Q. And you believe that what we just</p> <p>22 described there was communicated in one of those</p>
<p style="text-align: right;">Page 343</p> <p>1 effective for detecting pharmacies at which</p> <p>2 diversion may be occurring?</p> <p>3 MR. MIGLIORI: Objection to form.</p> <p>4 THE WITNESS: I agree that dispensing</p> <p>5 data is important during the due diligence</p> <p>6 process. So a review of dispensing data and an</p> <p>7 analysis of dispensing data opens up a whole wide</p> <p>8 range, broad range of information that you could</p> <p>9 use to determine if an order is potentially</p> <p>10 suspicious or suspicious.</p> <p>11 So yes, I agree with that.</p> <p>12 BY MR. KOHLER:</p> <p>13 Q. If you could turn to page 67 of</p> <p>14 Exhibit 4.</p> <p>15 A. Okay.</p> <p>16 Q. First full paragraph, last sentence: As</p> <p>17 discussed above, a compliant SOM system should</p> <p>18 employ analytics, historical data, pharmacy-level</p> <p>19 dispensing data, and other detailed information</p> <p>20 from pharmacy personnel to resolve suspicion</p> <p>21 surrounding a particular order.</p> <p>22 Did I read that correctly?</p>	<p style="text-align: right;">Page 345</p> <p>1 three letters?</p> <p>2 A. I'm pretty sure -- it was communicated,</p> <p>3 yeah. Plus, when I did the diversion awareness</p> <p>4 conferences, I talked about it.</p> <p>5 Q. Now, the regulations governing SOM has</p> <p>6 been in place since the early '70s, right?</p> <p>7 A. Yes.</p> <p>8 Q. And the DEA has never approved a SOM</p> <p>9 system, correct?</p> <p>10 A. That is correct.</p> <p>11 Q. And as of today, you've never designed a</p> <p>12 SOM system, right?</p> <p>13 A. No. I have not designed a...</p> <p>14 Q. As of today, you've never been consulted</p> <p>15 in the design or implementation of a SOM system,</p> <p>16 correct?</p> <p>17 A. No.</p> <p>18 Q. Do you have any expertise concerning the</p> <p>19 technological capabilities of SOM systems between</p> <p>20 '06 and 2018?</p> <p>21 A. When you talk about the technological</p> <p>22 capabilities, what are we talking about?</p>

<p style="text-align: right;">Page 346</p> <p>1 Q. Software, algorithms.</p> <p>2 A. No, I'm not a computer guy.</p> <p>3 Q. Do you have any expertise concerning the</p> <p>4 technological limitations of SOM systems between</p> <p>5 '06 and '18?</p> <p>6 MR. MIGLIORI: Objection to form.</p> <p>7 Go ahead.</p> <p>8 THE WITNESS: I wouldn't know that</p> <p>9 because I don't -- again, I have not been involved</p> <p>10 in creating a SOM. So...</p> <p>11 BY MR. KOHLER:</p> <p>12 Q. I'll ask this question. I suspect I know</p> <p>13 the answer.</p> <p>14 Given the advancements in technology,</p> <p>15 would you agree that a SOM system designed and</p> <p>16 implemented today could be more effective than one</p> <p>17 in effect between 2006 and 2019?</p> <p>18 MR. MIGLIORI: Objection to form and</p> <p>19 foundation.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: I don't know all of the</p> <p>22 different technical capabilities dating back that</p>	<p style="text-align: right;">Page 348</p> <p>1 there's got to be a separate unit of people that</p> <p>2 look at orders and make a determination if that</p> <p>3 order is a legitimate order or an order that is</p> <p>4 suspicious and needs to be stopped and reported.</p> <p>5 So I don't think at the pharmacy level</p> <p>6 they could tell you -- because they're doing the</p> <p>7 ordering, so it would be silly for them to order</p> <p>8 and then say, by the way, this is suspicious.</p> <p>9 Q. No, my point is that that person who is</p> <p>10 doing the order, at Publix, say, the pharmacist</p> <p>11 who is doing the ordering, based upon their</p> <p>12 training, their education, and their experience,</p> <p>13 aren't they part of the SOM system by making a</p> <p>14 decision about, hey, we've got these scripts that</p> <p>15 come in, they look suspicious, I'm not placing</p> <p>16 this order?</p> <p>17 MR. MIGLIORI: Objection to form.</p> <p>18 BY MR. KOHLER:</p> <p>19 Q. Aren't -- wouldn't they be kind of part</p> <p>20 of the SOM system in that case?</p> <p>21 A. That would be corresponding</p> <p>22 responsibility, and that's a separate distinct --</p>
<p style="text-align: right;">Page 347</p> <p>1 far, so I couldn't answer that.</p> <p>2 BY MR. KOHLER:</p> <p>3 Q. You know, we talked -- earlier I asked</p> <p>4 about whether, you know, a SOM system could be</p> <p>5 more than just a computer software program, that</p> <p>6 it could be -- involve people, too, right? And</p> <p>7 you referenced that, yeah, people need to -- there</p> <p>8 needs to be a human touch to kind of follow up on</p> <p>9 what -- but I'm not talking about the due</p> <p>10 diligence process. I'm just talking about -- you</p> <p>11 know, in Publix's case, as a self-distributor,</p> <p>12 would you agree that its pharmacists and</p> <p>13 technicians can be part of the SOM system to</p> <p>14 detect suspicious orders?</p> <p>15 MR. MIGLIORI: Objection to form.</p> <p>16 THE WITNESS: Well, I don't know how that</p> <p>17 would be because the pharmacists and the pharmacy</p> <p>18 technicians are making the orders that are</p> <p>19 potentially suspicious.</p> <p>20 BY MR. KOHLER:</p> <p>21 Q. Okay.</p> <p>22 A. So I don't -- the whole idea is that</p>	<p style="text-align: right;">Page 349</p> <p>1 corresponding responsibility is a check on the</p> <p>2 doctors. The distributors' role is a check on the</p> <p>3 pharmacies.</p> <p>4 So no, it's separate systems, separate</p> <p>5 obligations under the law.</p> <p>6 Q. Must a SOM system substantially comply</p> <p>7 with the regs?</p> <p>8 A. It's not whether they substantially</p> <p>9 comply; it's whether the system actually complies</p> <p>10 with the regs. It's not substantially comply.</p> <p>11 That means, well, it might -- if you're only doing</p> <p>12 one portion of the three requirements, then no.</p> <p>13 Or two. You have to do all three.</p> <p>14 Q. That wasn't my question.</p> <p>15 A. Well, it is, because substantial</p> <p>16 compliance is that, oh, well, we might not have</p> <p>17 done this, but we did the other two. No.</p> <p>18 Q. So you would -- does a SOM system have to</p> <p>19 strictly comply with the regs?</p> <p>20 A. Yes.</p> <p>21 MR. MIGLIORI: Objection to form.</p> <p>22 Go ahead.</p>

<p style="text-align: right;">Page 350</p> <p>1 THE WITNESS: Yes. And the reason is is</p> <p>2 because if your SOM system is not complying with</p> <p>3 the regs, there's a good chance of diversion.</p> <p>4 BY MR. KOHLER:</p> <p>5 Q. Must a distribut- -- a registrant or</p> <p>6 distributor, must they substantially comply with</p> <p>7 the regs with respect to their physical security</p> <p>8 systems?</p> <p>9 MR. MIGLIORI: Objection.</p> <p>10 THE WITNESS: Again, physical security is</p> <p>11 one of those things where, you know, you should</p> <p>12 have full compliance. Must they? I don't know</p> <p>13 exactly -- I know substantial compliance is in</p> <p>14 there, but I'm not sure that it's part of physical</p> <p>15 security.</p> <p>16 I know that when you look at substantial</p> <p>17 compliance, you're looking at, well, 90 percent of</p> <p>18 the invoices were done -- or 222 forms were done</p> <p>19 correctly, there were a few that weren't, and</p> <p>20 that's why you have a letter of admonition or just</p> <p>21 a verbal warning to maintain it.</p> <p>22 So you --</p>	<p style="text-align: right;">Page 352</p> <p>1 Q. Yeah. Third full paragraph, second line.</p> <p>2 You say, The absence of formal operational SOM</p> <p>3 policies, lack of adequate training and guidance,</p> <p>4 and limited resources and support prevented</p> <p>5 suspicious orders from being appropriately</p> <p>6 identified and reviewed and allowed potentially</p> <p>7 suspicious orders to be shipped to Publix's</p> <p>8 pharmacies.</p> <p>9 Did I read that correct?</p> <p>10 A. Yes.</p> <p>11 Q. You don't state that suspicious orders</p> <p>12 were actually sent to Publix's pharmacies, do you?</p> <p>13 You don't contend that, do you?</p> <p>14 A. Well, I think -- in my opinion, there</p> <p>15 were orders that were sent that I would consider</p> <p>16 suspicious.</p> <p>17 But the whole idea behind this sentence</p> <p>18 is -- so I don't remember what -- the fact is that</p> <p>19 between 2005 and 2012, you had a system where no</p> <p>20 one looked at a suspicious order. PIMS was a</p> <p>21 machine-generated inventory system that cut</p> <p>22 everything back --</p>
<p style="text-align: right;">Page 351</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. My --</p> <p>3 A. -- substantially complied, but you didn't</p> <p>4 have full compliance.</p> <p>5 Q. Just to be clear, must a distributor or</p> <p>6 registrant substantially comply with the physical</p> <p>7 security requirements under the regs?</p> <p>8 A. I don't recall what the measure is under</p> <p>9 the regs for physical security.</p> <p>10 Q. Does the -- when you were at the DEA,</p> <p>11 does the DEA enforce the Controlled Substances Act</p> <p>12 to the letter of the law?</p> <p>13 MR. MIGLIORI: Objection. Form.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. MIGLIORI: Go ahead.</p> <p>17 BY MR. KOHLER:</p> <p>18 Q. Yes?</p> <p>19 A. Yes. Absolutely.</p> <p>20 Q. Okay. If you could turn to page 49,</p> <p>21 please.</p> <p>22 A. 49?</p>	<p style="text-align: right;">Page 353</p> <p>1 Q. Mr. Rannazzisi --</p> <p>2 MR. MIGLIORI: No, no. Let him finish.</p> <p>3 MR. KOHLER: Well, hold on. He's not</p> <p>4 answering my question.</p> <p>5 MR. MIGLIORI: Then --</p> <p>6 MR. KOHLER: He's filibustering --</p> <p>7 THE WITNESS: No, I'm not --</p> <p>8 MR. KOHLER: -- and I'm not going to</p> <p>9 tolerate that.</p> <p>10 MR. MIGLIORI: No, no --</p> <p>11 MR. KOHLER: The question was simple --</p> <p>12 MR. MIGLIORI: Stop.</p> <p>13 MR. KOHLER: The question was</p> <p>14 straightforward.</p> <p>15 MR. MIGLIORI: Answer the question the</p> <p>16 way you want to answer the question,</p> <p>17 Mr. Rannazzisi.</p> <p>18 Just because you don't like the answer</p> <p>19 doesn't --</p> <p>20 THE WITNESS: Repeat the question.</p> <p>21 MR. MIGLIORI: -- mean it's</p> <p>22 filibustering.</p>

<p style="text-align: right;">Page 354</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. Did you provide a single example in your</p> <p>3 report where a suspicious order was actually sent</p> <p>4 to a Publix pharmacy?</p> <p>5 A. I listed in my report orders that were</p> <p>6 deemed over threshold, which means they're orders</p> <p>7 of interest. And they were basically approved</p> <p>8 with no due diligence done.</p> <p>9 Q. Tell me one order --</p> <p>10 MR. MIGLIORI: Are you finished? Are you</p> <p>11 finished?</p> <p>12 BY MR. KOHLER:</p> <p>13 Q. Tell me one order that was sent to a Cobb</p> <p>14 County Publix pharmacy --</p> <p>15 MR. MIGLIORI: I'm asking -- I'm asking</p> <p>16 my expert a question. At least let me get an</p> <p>17 answer.</p> <p>18 Were you finished with your question</p> <p>19 [sic].</p> <p>20 THE WITNESS: Yes.</p> <p>21 I'm going to -- so you want an example of</p> <p>22 an order -- this is an ANDA --</p>	<p style="text-align: right;">Page 356</p> <p>1 sent to a Cobb County pharmacy were the three that</p> <p>2 are identified on page 61, correct?</p> <p>3 MR. MIGLIORI: Objection. Asked and</p> <p>4 answered.</p> <p>5 THE WITNESS: Yeah. But the three that</p> <p>6 were --</p> <p>7 BY MR. KOHLER:</p> <p>8 Q. But you would agree that --</p> <p>9 MR. MIGLIORI: But the three that were...</p> <p>10 Continue.</p> <p>11 THE WITNESS: The three examples are</p> <p>12 pretty serious examples. I mean --</p> <p>13 BY MR. KOHLER:</p> <p>14 Q. Okay. The question was, do you have an</p> <p>15 example of where the order was shipped to a</p> <p>16 Cobb County pharmacy? You don't know if those</p> <p>17 orders were shipped to a Cobb County pharmacy, do</p> <p>18 you?</p> <p>19 MR. MIGLIORI: So that wasn't the</p> <p>20 question, so now --</p> <p>21 MR. KOHLER: It was.</p> <p>22 MR. MIGLIORI: -- you've got a new</p>
<p style="text-align: right;">Page 355</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. Which page are you referring to?</p> <p>3 A. Page 60. This is ANDA requesting --</p> <p>4 Q. The question was to a Cobb County</p> <p>5 pharmacy.</p> <p>6 A. Okay. Let me look and see what we have</p> <p>7 for Cobb County.</p> <p>8 Okay. Here is oxycodone 10/325s. They</p> <p>9 ask for --</p> <p>10 Q. I'm sorry, which page are you referring</p> <p>11 to?</p> <p>12 A. Page 61.</p> <p>13 Q. Okay. So in all your analysis, the only</p> <p>14 three examples you provided for Cobb County were</p> <p>15 on page 61, correct?</p> <p>16 A. Well, yeah, I believe so, because that's</p> <p>17 what was given to me. I don't know if there were</p> <p>18 others --</p> <p>19 Q. Okay.</p> <p>20 A. -- out there, but that's what --</p> <p>21 Q. So the only three examples that you can</p> <p>22 provide that, in your mind, a suspicious order was</p>	<p style="text-align: right;">Page 357</p> <p>1 question.</p> <p>2 THE WITNESS: The request was</p> <p>3 submitted -- I have no reason to believe that</p> <p>4 these were not submitted --</p> <p>5 BY MR. KOHLER:</p> <p>6 Q. No, no, that wasn't my question.</p> <p>7 A. Well --</p> <p>8 Q. My question was --</p> <p>9 MR. MIGLIORI: You don't get to stop him</p> <p>10 when you don't like the answer if he's still</p> <p>11 talking.</p> <p>12 MR. KOHLER: He's not answering --</p> <p>13 MR. MIGLIORI: Just be kind --</p> <p>14 MR. KOHLER: He's not answering the</p> <p>15 question.</p> <p>16 MR. MIGLIORI: I'll give you an extra</p> <p>17 three minutes if you feel that he's filibustering</p> <p>18 for three minutes.</p> <p>19 MR. KOHLER: Well, whatever. I'll take</p> <p>20 it. Thank you.</p> <p>21 MR. MIGLIORI: Okay? I'll keep the clock</p> <p>22 for the filibuster.</p>

<p style="text-align: right;">Page 358</p> <p>1 MR. KOHLER: Thank you.</p> <p>2 MR. MIGLIORI: Just be courteous.</p> <p>3 THE WITNESS: Based on the documents I</p> <p>4 read, I had no reason to believe that those were</p> <p>5 not sent. Do I know for sure if they were sent?</p> <p>6 No. But the documents --</p> <p>7 BY MR. KOHLER:</p> <p>8 Q. You --</p> <p>9 A. -- didn't really offer a really good</p> <p>10 description of what exactly happened.</p> <p>11 Q. In your first example, you were</p> <p>12 incredulous about the explanation for the need of</p> <p>13 the order, but you note there was no document that</p> <p>14 reflected an adjudication of this request, meaning</p> <p>15 you don't know if it was sent or not, right?</p> <p>16 A. That's correct. On that one. Yes.</p> <p>17 Q. And the same for the next one, right?</p> <p>18 There was no document provided that reflected an</p> <p>19 adjudication of this request, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And the same for the third one. There</p> <p>22 was no document provided that reflected an</p>	<p style="text-align: right;">Page 360</p> <p>1 The question was, can you provide me a</p> <p>2 single example of Publix shipping a suspicious</p> <p>3 order to a Cobb County pharmacy?</p> <p>4 You can't do that, can you?</p> <p>5 A. Based on the documents I received, what I</p> <p>6 can tell you is these were in there, and I -- I</p> <p>7 don't know whether they were sent or not.</p> <p>8 Q. Okay. Thank you.</p> <p>9 Let's go to -- back to page 49,</p> <p>10 Mr. Rannazzisi.</p> <p>11 A. Page 49?</p> <p>12 Q. Yes, sir.</p> <p>13 A. Okay.</p> <p>14 Q. Final sentence of the final paragraph.</p> <p>15 It says, As discussed later in this report, PIMS</p> <p>16 was quantity/volume based, functioned as nothing</p> <p>17 more than an inventory control system, could be</p> <p>18 easily circumvented, and failed to identify orders</p> <p>19 that were of unusual size or frequency or deviated</p> <p>20 substantially from a normal pattern.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 359</p> <p>1 adjudication of this request, correct?</p> <p>2 So again, my original question --</p> <p>3 MR. MIGLIORI: Did you answer the third</p> <p>4 one? I didn't hear it.</p> <p>5 MR. KOHLER: I'm sorry.</p> <p>6 THE WITNESS: I'm reading -- I'm reading</p> <p>7 the document.</p> <p>8 Okay. So yes, there was no -- but then,</p> <p>9 again -- I'm just trying to -- 2015 time frame.</p> <p>10 You were -- at that point in time, they were</p> <p>11 operating under the enhanced PIMS, so you were</p> <p>12 actually using a threshold, and those were bounced</p> <p>13 for the threshold. It wasn't just the PIMS where</p> <p>14 there was an MOQ. It was operating under the</p> <p>15 enhanced PIMS where there's a threshold.</p> <p>16 So I don't know, but they definitely</p> <p>17 bounced off the threshold.</p> <p>18 BY MR. KOHLER:</p> <p>19 Q. Okay.</p> <p>20 A. So...</p> <p>21 Q. So going back to my original question,</p> <p>22 with the benefit of looking at page 60 and 61.</p>	<p style="text-align: right;">Page 361</p> <p>1 Q. Go on to page 50, final paragraph. It</p> <p>2 looks like it's the third sentence. It says, If</p> <p>3 the pharmacist is not vigilant -- do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. -- when performing this required process</p> <p>6 and instead continues to fill prescriptions with</p> <p>7 red flags, more drug seekers will come to the</p> <p>8 pharmacy seeking to have illegitimate</p> <p>9 prescriptions filled.</p> <p>10 Can you provide me a single example in</p> <p>11 which that happened at any Cobb County Publix</p> <p>12 pharmacy?</p> <p>13 A. In Cobb County?</p> <p>14 Q. Yes, sir.</p> <p>15 A. No, but it is -- that is consistent with</p> <p>16 all the other diversion cases that I've done and</p> <p>17 been involved with, that once the pharmacist does</p> <p>18 not do corresponding responsibility appropriately,</p> <p>19 he's going to have an increase in foot traffic</p> <p>20 with prescriptions. It's just -- it's a natural</p> <p>21 occurrence.</p> <p>22 Q. But again, I'm asking for a specific</p>

<p style="text-align: right;">Page 362</p> <p>1 example of that actually happening in Cobb County.</p> <p>2 You can't give that to me with respect to</p> <p>3 Publix, can you?</p> <p>4 A. I can't give it to you, but I think that</p> <p>5 was addressed in Catizone's report.</p> <p>6 Q. If you could go to page 51. We'll start</p> <p>7 at the bottom there.</p> <p>8 A. Okay.</p> <p>9 Q. The PIMS SMQ process could be easily</p> <p>10 circumvented.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And then you go on to explain how it</p> <p>14 could be circumvented, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And the question is, can you provide me a</p> <p>17 single -- an example where this actually -- this</p> <p>18 circumvision [sic] happened in a Publix</p> <p>19 Cobb County pharmacy?</p> <p>20 A. Again, my role was to review the SOM</p> <p>21 system and show where the holes in the system</p> <p>22 were, if there were any. And in this case, that's</p>	<p style="text-align: right;">Page 364</p> <p>1 example of Publix filling or shipping a suspicious</p> <p>2 order from a Cobb County Publix pharmacy that it</p> <p>3 shouldn't have filled or shipped, does it?</p> <p>4 A. No, because Publix never filed any</p> <p>5 suspicious orders until 2018.</p> <p>6 Q. Your report doesn't provide an actual</p> <p>7 example of a Cobb County Publix pharmacist</p> <p>8 dispensing opioids he or she should not have</p> <p>9 dispensed, does it?</p> <p>10 MR. MIGLIORI: Objection to foundation.</p> <p>11 Wrong expert.</p> <p>12 Go ahead.</p> <p>13 THE WITNESS: Could you ask the question</p> <p>14 again.</p> <p>15 BY MR. KOHLER:</p> <p>16 Q. Your report doesn't provide an actual</p> <p>17 example of a Cobb County Publix pharmacist</p> <p>18 dispensing opioids he or she should not have</p> <p>19 dispensed, does it?</p> <p>20 MR. MIGLIORI: Same objection.</p> <p>21 THE WITNESS: No, that wasn't my role.</p> <p>22</p>
<p style="text-align: right;">Page 363</p> <p>1 a major hole.</p> <p>2 And no, I can't tell you if that</p> <p>3 happened. But when the SOM system is based on a</p> <p>4 particular item or NDC, you could always go around</p> <p>5 it because there's always another item with a</p> <p>6 different item number or different NDC that's the</p> <p>7 same dose and strength in drug class of that</p> <p>8 particular -- so it happens. We've seen it</p> <p>9 happen.</p> <p>10 Q. You've seen it happen, but you can't</p> <p>11 provide me a single time in Cobb County -- a</p> <p>12 Publix Cobb County pharmacy in which this example</p> <p>13 you give on 51 and 52 happened, correct?</p> <p>14 MR. MIGLIORI: Objection. Foundation.</p> <p>15 THE WITNESS: Again, I've never seen</p> <p>16 dispensing data from Cobb County, so I couldn't</p> <p>17 tell you. Or ordering data.</p> <p>18 BY MR. KOHLER:</p> <p>19 Q. Your report doesn't identify a suspicious</p> <p>20 order from a Cobb County Publix pharmacy, does it?</p> <p>21 A. Not from a Cobb County pharmacy, no.</p> <p>22 Q. Your report doesn't provide an actual</p>	<p style="text-align: right;">Page 365</p> <p>1 BY MR. KOHLER:</p> <p>2 Q. Your report doesn't provide an example of</p> <p>3 somebody in Cobb County receiving opioid</p> <p>4 medication from a Cobb County Publix pharmacist</p> <p>5 that he or she should not have received, does it?</p> <p>6 MR. MIGLIORI: Same objection.</p> <p>7 THE WITNESS: Again, that's not my role.</p> <p>8 BY MR. KOHLER:</p> <p>9 Q. I understand it's not your role, but your</p> <p>10 report doesn't --</p> <p>11 A. No.</p> <p>12 Q. All right. Your report doesn't provide</p> <p>13 an example of somebody in Cobb County receiving</p> <p>14 opioid medication from a Cobb County Publix</p> <p>15 pharmacist that he or she should not have received</p> <p>16 and becoming addicted to opioids, does it?</p> <p>17 MR. MIGLIORI: Objection. Same</p> <p>18 objection. Foundation.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. KOHLER:</p> <p>21 Q. Your report doesn't provide an example of</p> <p>22 somebody in Cobb County receiving opioid</p>

<p style="text-align: right;">Page 366</p> <p>1 medication from a Cobb County Publix pharmacist 2 that he or she should not have received and 3 overdosing on the opioid medication, does it? 4 MR. MIGLIORI: Objection to foundation. 5 THE WITNESS: No. 6 BY MR. KOHLER: 7 Q. Your report doesn't provide an example of 8 somebody in Cobb County receiving opioid 9 medication from a Cobb County Publix pharmacist 10 that he or she should not have received and dying 11 from taking the opioid medication, does it? 12 MR. MIGLIORI: Same objection. 13 THE WITNESS: No. 14 BY MR. KOHLER: 15 Q. Your report doesn't provide an example of 16 somebody in Cobb County receiving opioid 17 medication from a Cobb County Publix pharmacist 18 they should not have received and Cobb County 19 having to incur any cost in treating the person 20 who received the opioid medication, does it? 21 MR. MIGLIORI: Same objection. 22 THE WITNESS: No. My report centered on</p>	<p style="text-align: right;">Page 368</p> <p>1 the State of Georgia average? 2 MR. MIGLIORI: Objection to foundation. 3 THE WITNESS: I don't know. 4 BY MR. KOHLER: 5 Q. During the time period of your report, 6 what was Publix's percentage of distribution of 7 opioids compared to the Cobb County average? 8 MR. MIGLIORI: Same objection. 9 THE WITNESS: That, I don't know. 10 BY MR. KOHLER: 11 Q. What was Publix's percentage of 12 dispensing of opioids compared to the national 13 average during the time period of your report? 14 MR. MIGLIORI: Objection to foundation. 15 THE WITNESS: Again, I don't know. 16 BY MR. KOHLER: 17 Q. What was Publix's percentage of 18 dispensing of opioids compared to the State of 19 Georgia average during the time period of your 20 report? 21 MR. MIGLIORI: Objection. Foundation. 22 THE WITNESS: I don't know.</p>
<p style="text-align: right;">Page 367</p> <p>1 SOMs. 2 BY MR. KOHLER: 3 Q. Okay. During the time period of your 4 report -- so that would be 2006 to '19 or '20? 5 A. '20. 6 Q. Okay. 7 A. Because I mentioned OI, OrderInsite. 8 Q. Do you remember when that went into 9 effect? 10 A. '20. It started in -- actually, it was 11 two years after they said that the other one 12 wasn't working. So probably '19, I guess. 13 Q. Okay. During the time period of your 14 report -- 15 A. Uh-huh. 16 Q. -- what was Publix's percentage of 17 distribution of opioids compared to the national 18 average? 19 A. I don't know. 20 Q. What was Publix's -- during the time 21 period of your report, what was Publix's 22 percentage of distribution of opioids compared to</p>	<p style="text-align: right;">Page 369</p> <p>1 BY MR. KOHLER: 2 Q. And what was Publix's percentage of 3 dispensing of opioids compared to the Cobb County 4 average during the time period of your report? 5 MR. MIGLIORI: Objection. Foundation. 6 THE WITNESS: I don't know. 7 BY MR. KOHLER: 8 Q. You mentioned Mr. Catizone, correct? 9 A. Yes. 10 Q. Is he Dr. or goes by Mr.? Is he -- 11 A. I believe he's got the title of doctor. 12 Q. Okay. In your report, similar to the one 13 that Albertsons' counsel pointed out earlier, you 14 referenced on page 77 that you reviewed 15 Dr. Catizone's report, correct? 16 A. Yes, I did. 17 Q. And similar to the language you used in 18 Albertsons -- in Albertsons' report, you said, I 19 reviewed a draft of the expert report of Carmen 20 Catizone. 21 Do you see that there? 22 A. Yes.</p>

<p style="text-align: right;">Page 370</p> <p>1 Q. So which draft of his expert report did 2 you review?</p> <p>3 A. It says draft, but I reviewed the report 4 that they did -- he did for Cobb County.</p> <p>5 Q. So it was his final signed report?</p> <p>6 A. Yes.</p> <p>7 Q. I believe part of that report identifies 8 certain red flags that must be resolved before the 9 pharmacist dispenses an opioid medication; is that 10 right?</p> <p>11 A. Yes.</p> <p>12 Q. Did you independently review the red flag 13 data that Dr. Catizone relies on?</p> <p>14 A. No.</p> <p>15 Q. Do you intend to offer any opinions in 16 this case about red flags?</p> <p>17 A. Just what's in my report.</p> <p>18 Q. Okay. Are you familiar with the DEA 19 pharmacist's manual?</p> <p>20 A. Yes.</p> <p>21 Q. And can you briefly tell me what that is?</p> <p>22 A. The pharmacist's manual basically is</p>	<p style="text-align: right;">Page 372</p> <p>1 Q. Did you author any of the content or have 2 any -- did you ask that anything be included in 3 that? Were you part of that process?</p> <p>4 A. That goes through a review committee, and 5 the decisions are final based on what the review 6 committee does.</p> <p>7 Q. Were you on that review committee?</p> <p>8 A. No.</p> <p>9 Q. Was there -- at any point in time, had 10 you read that pharmacist's manual and made some 11 recommendations of things that should be included 12 in there with respect to SOM systems?</p> <p>13 A. That would, again, review committee, and 14 if I'm not mistaken, the Department of Justice 15 would look at it, too.</p> <p>16 I never -- I read the manual to ensure 17 that everything was correct. I read it as a 18 pharmacist.</p> <p>19 And so -- but the manual goes through the 20 review committee, so I don't know exactly what 21 corrections were made. They didn't make 22 corrections that I had issues with, so -- or I</p>
<p style="text-align: right;">Page 371</p> <p>1 provided to pharmacists so they understand what 2 their legal obligations are, what rules, 3 regulations, and laws they're required to comply 4 with under the Controlled Substances Act, the 5 implementing regulations. And it's used part and 6 parcel with the state regulations.</p> <p>7 Q. Were you at all involved in the 8 preparation or editing or review or approval of 9 that manual?</p> <p>10 A. I think I signed one of those manuals. 11 Yes.</p> <p>12 Q. And how -- how often was that updated 13 during your tenure at the -- as head of diversion 14 control?</p> <p>15 A. I don't remember exactly. I think it was 16 updated two or three times.</p> <p>17 Q. And did you provide any input -- I know 18 you said you signed it, but did you actually 19 provide substantive input --</p> <p>20 A. Oh, I read the manual, yeah.</p> <p>21 Q. I'm sorry?</p> <p>22 A. I've read the manual.</p>	<p style="text-align: right;">Page 373</p> <p>1 wouldn't have signed it.</p> <p>2 Q. If you could turn to page 18, please.</p> <p>3 A. 18?</p> <p>4 Q. Yes, sir.</p> <p>5 Last sentence of the last paragraph.</p> <p>6 A. Yes.</p> <p>7 Q. It says, My summary of each defendant's 8 programs highlights deficiencies I found during my 9 review. However, the emphasis on one or more 10 deficiencies is not intended to be exhaustive of 11 the deficiencies found.</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Were there any other deficiencies that 15 you found that are not in this report?</p> <p>16 A. The reason I put that in there is because 17 there are documents that might have fleshed out 18 some things, but there were no documents available 19 that discuss it.</p> <p>20 Q. So all the deficiencies that you can 21 comment on are in the four corners of this report?</p> <p>22 A. Well, there's -- yeah, and there's quite</p>

<p style="text-align: right;">Page 374</p> <p>1 a few. So...</p> <p>2 Q. Okay. If you can go to page 55, please.</p> <p>3 Do you see where it says, "Reporting suspicious</p> <p>4 orders"?</p> <p>5 A. Yes.</p> <p>6 Q. Final sentence: The files should be</p> <p>7 retained for all customers indefinitely and should</p> <p>8 be accessible to all employees who perform due</p> <p>9 diligence.</p> <p>10 Did I read that correctly?</p> <p>11 A. That is correct.</p> <p>12 Q. And to be clear, you believe a suspicious</p> <p>13 order from, say -- do you know where store number</p> <p>14 33 is in Cobb County?</p> <p>15 A. No.</p> <p>16 Q. All right. It's over in East Cobb off of</p> <p>17 Sandy Plains and Shallowford Road.</p> <p>18 A. Okay.</p> <p>19 Q. Is it your testimony that a suspicious</p> <p>20 order from store number 33 in East Cobb in 1995</p> <p>21 should still be maintained today, nearly 30 years</p> <p>22 later?</p>	<p style="text-align: right;">Page 376</p> <p>1 diligence files to be. But as we've said before,</p> <p>2 the due diligence files don't take up a massive</p> <p>3 amount of paperwork. In fact, a historical</p> <p>4 perspective of the orders that were deemed</p> <p>5 suspicious and the reason they were deemed</p> <p>6 suspicious should take up very little space on any</p> <p>7 type of drive. But it pays off dearly because if</p> <p>8 that store is showing a pattern again, you want to</p> <p>9 know why it was suspicious back in 1995 and if it</p> <p>10 follows -- if the orders that are now being deemed</p> <p>11 suspicious follow that same pattern they did in</p> <p>12 1995. It's a basis of foundation that's</p> <p>13 necessary.</p> <p>14 Q. So as long as store number 33 is</p> <p>15 operating, any due diligence stuff related to</p> <p>16 store 33 should be held, as you say, indefinitely?</p> <p>17 A. That's up to the company but --</p> <p>18 Q. No, that's what you said, right?</p> <p>19 MR. MIGLIORI: No, no --</p> <p>20 THE WITNESS: -- in my opinion --</p> <p>21 MR. MIGLIORI: That's not what he said.</p> <p>22 THE WITNESS: In my opinion, yes, it</p>
<p style="text-align: right;">Page 375</p> <p>1 A. I don't know if Publix was doing</p> <p>2 suspicious orders back in 1995. However, what I</p> <p>3 do know is that the a due diligence file should</p> <p>4 have a historical perspective of all of their</p> <p>5 orders, whether deemed suspicious or not. And the</p> <p>6 reason is is because that establishes a foundation</p> <p>7 for due diligence.</p> <p>8 Q. So to be clear, any due diligence that</p> <p>9 was done with respect to an order from store</p> <p>10 number 33 nearly 30 years ago, Publix should still</p> <p>11 have, in your opinion?</p> <p>12 MR. MIGLIORI: Objection. Asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: Yeah, I don't see why they</p> <p>15 wouldn't if they're performing due diligence</p> <p>16 appropriately.</p> <p>17 BY MR. KOHLER:</p> <p>18 Q. Assuming this store is around in the next</p> <p>19 30 years, do you think it should still have due</p> <p>20 diligence files from the mid-'90s?</p> <p>21 A. I think that the company should make a</p> <p>22 determination of how extensive they want their due</p>	<p style="text-align: right;">Page 377</p> <p>1 should be.</p> <p>2 BY MR. KOHLER:</p> <p>3 Q. If you could turn to page 63, please. Do</p> <p>4 you see the second paragraph under the "due</p> <p>5 diligence" header?</p> <p>6 A. Yes.</p> <p>7 Q. You reference a compliance team memo from</p> <p>8 November 10th of 2015, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did that involve pharmacies located in</p> <p>11 Cobb County?</p> <p>12 A. That, I don't remember.</p> <p>13 Q. All right. If you go to page 64. The</p> <p>14 second full paragraph that starts with "Note that</p> <p>15 period 2."</p> <p>16 A. Yeah.</p> <p>17 Q. You reference a fourth -- a 2015</p> <p>18 fourth-quarter compliance memo.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Did that deal with pharmacies located in</p> <p>22 Cobb County?</p>

<p style="text-align: right;">Page 378</p> <p>1 A. I just need to read that paragraph.</p> <p>2 Q. Yeah, go ahead.</p> <p>3 A. It doesn't say if it was in Cobb County</p> <p>4 or not.</p> <p>5 Q. What did the DEA do with suspicious order</p> <p>6 reports concerning pharmacies in Cobb County</p> <p>7 between 2005 and '15?</p> <p>8 A. I'm not allowed to discuss that. That's</p> <p>9 one of the things -- it's called investigative</p> <p>10 process, and they won't allow me to discuss that.</p> <p>11 I haven't talked about that in any of the</p> <p>12 depositions.</p> <p>13 Q. Is that because of Touhy stuff or</p> <p>14 something else?</p> <p>15 A. It's called Touhy. It's called</p> <p>16 investigative process, and they won't let me talk</p> <p>17 about investigative process.</p> <p>18 Q. If Publix had an effective SOM system</p> <p>19 that complied with the acts and regulations, would</p> <p>20 that have stopped the diversion of all opioids in</p> <p>21 Cobb County?</p> <p>22 MR. MIGLIORI: Objection. Foundation.</p>	<p style="text-align: right;">Page 380</p> <p>1 the pharmacy level, correct?</p> <p>2 A. I would say, yes, it does occur at the</p> <p>3 pharmacy level.</p> <p>4 Q. Part of what you reviewed in preparing</p> <p>5 your report was the complaint that was filed</p> <p>6 against Publix; is that fair?</p> <p>7 A. Yes.</p> <p>8 Q. You understand that one of the theory of</p> <p>9 recovery against Publix is that it's a public</p> <p>10 nuisance in Cobb County.</p> <p>11 Do you understand that?</p> <p>12 A. That's correct.</p> <p>13 Q. What's the public nuisance in</p> <p>14 Cobb County?</p> <p>15 A. The public nuisance --</p> <p>16 MR. MIGLIORI: Objection to form. Legal</p> <p>17 conclusion.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: The public nuisance is</p> <p>20 allowing -- because there is no SOM, without the</p> <p>21 SOM, you open the door to large-scale diversion,</p> <p>22 potential large-scale diversion. And not</p>
<p style="text-align: right;">Page 379</p> <p>1 Vague.</p> <p>2 THE WITNESS: Would it stop the</p> <p>3 diversion? I don't know if it would stop the</p> <p>4 diversion, but it would definitely put a -- you</p> <p>5 know, taking your portion of the diversion and</p> <p>6 decreasing the amount of diversion if they had a</p> <p>7 SOM program that worked.</p> <p>8 BY MR. KOHLER:</p> <p>9 Q. And what percentage of diverted opioids</p> <p>10 would it have stopped?</p> <p>11 MR. MIGLIORI: Objection. Form.</p> <p>12 Foundation.</p> <p>13 THE WITNESS: That, I couldn't tell.</p> <p>14 MR. MIGLIORI: Improper hypothetical.</p> <p>15 BY MR. KOHLER:</p> <p>16 Q. You would agree that the purpose of the</p> <p>17 SOM system is to prevent the diversion of</p> <p>18 controlled substances, including opioids, correct?</p> <p>19 A. The purpose of the SOM system is to</p> <p>20 identify suspicious orders so to prevent</p> <p>21 diversion. Yes.</p> <p>22 Q. And that diversion primarily occurs at</p>	<p style="text-align: right;">Page 381</p> <p>1 operating with a SOM is a contributing factor, a</p> <p>2 substantial contributing factor, in diversion.</p> <p>3 BY MR. KOHLER:</p> <p>4 Q. So what is the public nuisance in</p> <p>5 Cobb County?</p> <p>6 A. Well, if you're not operating a SOM and</p> <p>7 the drugs are leaving your pharmacies that are</p> <p>8 distributed downstream from your distributors and</p> <p>9 they're getting into the hands of people who are</p> <p>10 not supposed to have them because they're</p> <p>11 operating with prescriptions that are not for a</p> <p>12 legitimate medical purpose, people get harmed.</p> <p>13 That's the nuisance. When people get harmed, when</p> <p>14 people become addicted, people die. That becomes</p> <p>15 a serious issue, and that is a nuisance.</p> <p>16 Q. So you would agree that addiction is a</p> <p>17 harm caused by diversion of opioids in</p> <p>18 Cobb County?</p> <p>19 A. Not only addiction --</p> <p>20 MR. MIGLIORI: Objection. Go ahead.</p> <p>21 THE WITNESS: It's not just addiction.</p> <p>22 Overdose and death. We're not dealing with car</p>

<p style="text-align: right;">Page 382</p> <p>1 parts here. One drug -- one drug taken in an 2 inappropriate manner could kill you. One dosage 3 unit. And that's what we have to realize. It's 4 not a question of -- it's not a question of 5 multiple, multiple drugs. One dosage, one pill, 6 could hurt you. 7 BY MR. KOHLER: 8 Q. Can you -- can you go to page 10 of your 9 report? 10 A. Yes. 11 Q. You say here under -- do you see where it 12 says, Responsibility of registrants? 13 A. Yes. 14 Q. The United States has been in an opioid 15 crisis for more than two decades, and attention is 16 rightfully focused on how the healthcare delivery 17 system will do its part to abate the addiction, 18 overdose, and deaths that have suffered [sic]. 19 What do you mean by abate in that 20 context? 21 A. Stop. Slow down. 22 Q. In your report, do you cite to any study</p>	<p style="text-align: right;">Page 384</p> <p>1 MR. KOHLER: All right. Don, may I take 2 a break, look at my notes, talk to Kara? 3 MR. MIGLIORI: Yes. 4 VIDEO TECHNICIAN: The time is 4:30 p.m. 5 We're off the record. 6 (A recess was taken.) 7 VIDEO TECHNICIAN: The time is 4:40 p.m. 8 This begins unit number 7. We're on the record. 9 MR. KOHLER: Mr. Rannazzisi, thank you 10 for your time today. 11 THE WITNESS: Thank you. 12 MR. KOHLER: I am done today. Keep it 13 open, subject to some questions I had with respect 14 to that State of Ohio expert report that you gave. 15 I may never see you again. I may have to 16 redepose you on that. 17 THE WITNESS: That's -- 18 MR. KOHLER: We'll just play it by ear. 19 But for now, I'm going to suspend the deposition. 20 Okay? 21 THE WITNESS: Thank you very much. 22 MR. KOHLER: Thank you for your time.</p>
<p style="text-align: right;">Page 383</p> <p>1 or analysis about how much a bonus would need to 2 be to impact a pharmacist's clinical judgment? 3 A. I'm sorry. Are you asking me if -- 4 Q. Yeah. 5 A. -- there's somewhere in here that says 6 this amount of bonus will alter the clinical 7 judgment of a pharmacist? 8 Q. Yes. 9 A. I don't know. I guess it depends on the 10 pharmacist and what they're doing. 11 Q. Are you aware of any such studies? 12 A. No, but I don't think there would be 13 studies because every person has got their -- I 14 guess their own level of need. 15 Q. Financial need? 16 A. Yeah. 17 Q. And when you retired from the DEA, you 18 weren't in a position not to continue working, 19 correct? 20 A. No, I had to work. 21 Q. You had to put your kids through college? 22 A. Yes, sir.</p>	<p style="text-align: right;">Page 385</p> <p>1 MR. GIBBONS: I have no more questions 2 except for the one area that we had a disagreement 3 in. I may or may not see the wisdom of placing an 4 objection there. 5 And subject to that reservation, I have 6 no further questions either. 7 MR. MIGLIORI: Just so I'm clear, was 8 this on the question of the hypothetical? Was it 9 that exchange? 10 MR. GIBBONS: I keep forgetting what we 11 argued about. 12 MR. MIGLIORI: I think we argued about 13 whether your hypothetical was something he was 14 answering because he wouldn't answer any 15 hypothetical. 16 MR. GIBBONS: Yeah, okay. Whatever that 17 colloquy was, I am going to have to review it -- 18 MR. MIGLIORI: We're good. 19 MR. GIBBONS: -- and see who's got the 20 better argument there. 21 MR. MIGLIORI: I only have one little 22 quick question.</p>

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1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2

3 ASSIGNMENT REFERENCE NO: 6693127
CASE NAME: National Prescription Opiate Litigation - Track 8
(Cobb County) v.
DATE OF DEPOSITION: 5/30/2024
WITNESS' NAME: Joseph T. Rannazzisi

5 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.
I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
well as the reason(s) for the change(s).
I request that these changes be entered
as part of the record of my testimony.

10 I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
that both be appended to the transcript of my
testimony and be incorporated therein.

13 _____
Date Joseph T. Rannazzisi

14 Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:
They have read the transcript;
They have listed all of their corrections
in the appended Errata Sheet;
They signed the foregoing Sworn
Statement; and
Their execution of this Statement is of
their free act and deed.
I have affixed my name and official seal
this _____ day of _____, 20____.

23 _____
Notary Public

24 _____
Commission Expiration Date

Page 391

1 ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 6693127

3 PAGE/LINE(S) / CHANGE /REASON

4 _____

5 _____

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16 _____

17 _____

18 _____

19 _____

20 _____
Date Joseph T. Rannazzisi

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

22 DAY OF _____, 20____.

23 _____
Notary Public

24 _____
Commission Expiration Date

99 (Pages 390 - 391)